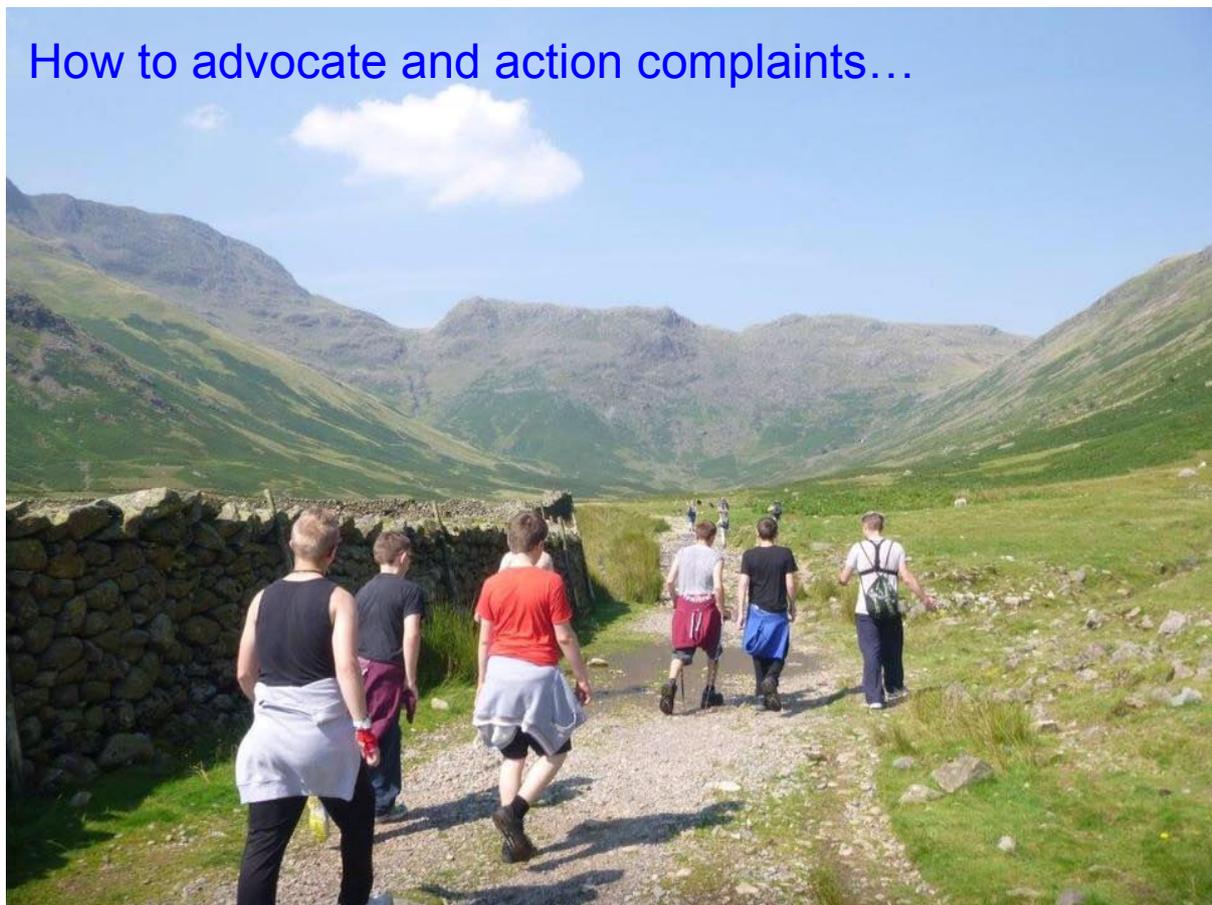




Complaints and Advocacy

How to advocate and action complaints...



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Key Supporting Legislation

- Children Act 1989 - <http://www.legislation.gov.uk/ukpga/1989/41/contents>
- Children Act 2004 - <http://www.legislation.gov.uk/ukpga/2004/31/contents>
- Children and Families Act 2014 - <http://www.legislation.gov.uk/ukpga/2014/6/contents/enacted>
- Children and Social Work ACT 2017 <http://www.legislation.gov.uk/ukpga/2017/16/contents/enacted>
- <http://www.legislation.gov.uk/ukpga/2010/15/contents> - Equality Act 2010
- Care Act 2014 - <http://www.legislation.gov.uk/ukpga/2014/23/contents/enacted>
- Deprivation of Liberty Safeguards - <http://www.cqc.org.uk/file/156026>
- Mental Capacity Act 2005 - <http://www.legislation.gov.uk/ukpga/2005/9/contents>

Short Breaks

- <https://www.gov.uk/government/publications/short-breaks-for-disabled-children>
- https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/245580/Short_Breaks_for_Carers_of_Disabled_Children.pdf
- <http://www.legislation.gov.uk/uksi/2011/707/made> - Short Breaks

SEN

- SEN Code of Practice Statutory Guidance - <https://www.gov.uk/government/publications/send-code-of-practice-0-to-25>
- http://www.legislation.gov.uk/uksi/2014/1530/pdfs/uksi_20141530_en.pdf - Special Educational Needs and Disability Regulation 2014
- <https://www.ipsea.org.uk/file-manager/SENlaw/the-sen-personal-budgets-regs-2014.pdf> - Special Educational Needs (Personal Budgets)
- <http://www.legislation.gov.uk/ukpga/1996/56/part/IV> - Education Act 1996 also see <https://www.ipsea.org.uk/file-manager/SENlaw/ea1996-part-iv-special-educational-needs-as-amended-2012.pdf> and <https://www.ipsea.org.uk/file-manager/SENlaw/schedule-27-as-amended-feb-12.pdf>

Exclusions

- Education Act 2011 - <https://www.ipsea.org.uk/file-manager/SENlaw/education-act-2011.pdf>
- <http://www.legislation.gov.uk/uksi/2012/1033/made> - The School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012
- <https://www.gov.uk/government/publications/school-exclusion>

Informal Complaints Processes

I would always encourage people to consider informal complaints processes first before going down the more formal route.

In education terms

- ★ this could be arranging a meeting with the Head-Teacher and/or SENCO (Special Educational Needs Coordinator)
- ★ It could be asking them to provide you with evidence of any education plans they might have outlining the support they are offering.

From a health perspective

- ★ it might involve contacting your GP
- ★ asking for written details of why a refusal to CAHMS (child and mental health adolescent service) occurred
- ★ Contacting the Paediatrician through the secretary
- ★ Asking for a second opinion

From a Social Care Perspective

- ★ It could be asking to speak to a manager of those departments

With regards to informal complaints it is always best to word things with a view to finding a solution together, it is at this stage that it is far better to use cooperative language rather than confrontational.

Formal Complaints Procedure – Background from a Legal Perspective

This part is and will be incredibly dry but without this information you might end up with a complaint which could have been strengthened using the following.

With regards to Formal Complaints we must separate procedure across Health, Education and Social Care although in most respects the law cross-over's many different areas at once, this is indicated in that it is now called an 'Education, Health and Care Plan'.

With any Formal Complaint a few pitfalls I am aware of that parents get themselves into usually involve failure to research fully and failure to support arguments with relevant legislation. I am aware that at a recent support group the SEN Code of Practice was mentioned, although this is a very good document it must be considered alongside the Act of Parliament in which it has been issued e.g. the Children and Families Act 2014.

The SEN Code of Practice is actually made statutory legislation by Section 77 of the Children and Families Act 2014.

Power vs. Duties and how this affects use of Legislation

When looking at Legislation we must also consider whether we are making a complaint against a failure of duty i.e. they must do it or whether it is complaint against something where legislation outlines a power i.e. they may do it. – Again this highlights the need to properly research your complaint to ensure the greatest success rate.

An example of a power is Section 20(4) of the Children Act 1989 which allows a local authority to provide accommodation for any child they consider that to do so would safeguard or promote the child's welfare'. A failure to exercise a power can be challenged on a number of bases

- ★ Rationality – failure to take account of a material consideration
- ★ Reasonableness – if no reasonable authority would fail to exercise the power
- ★ Fairness – the duty to treat like cases alike
- ★ Failing to further the policy and objects of the statute – the Padfield principle
- ★ Fettering of discretion – the need to consider exercising a power on each occasion it is requested
- ★ Human rights – that the failure to exercise a power would give rise to a break of a person's human rights

You have to be careful as it is harder to force a public authority to act on a power than if the relevant provision imposed a duty.

Duties can either be specific or general – a controversial aspect is that in the case of *R (G) v Barnet LBC* [2003] UKHL 57 so as long as the Local Authority is providing services generally to children in need in its area it will be held to have complied with its Section 17(1) Children Act 1989 duty – which is the duty to provide services to children in need.

Sufficiency Duty

In Social Welfare Law there is also a concept of 'sufficiency duty' – a requirement to have a sufficient supply of a particular service to meet need. Under the Children's and Families Act Section 27 the Duty to keep education and care provision under review

(1) A local authority in England must keep under review—

(a) the educational provision, training provision and social care provision made in its area for children and young people who have special educational needs or a disability, and

(b) The educational provision, training provision and social care provision made outside its area for—

(i) Children and young people for whom it is responsible who have special educational needs, and

(ii) Children and young people in its area who have a disability.

(2) The authority must consider the extent to which the provision referred to in subsection (1)(a) and (b) is sufficient to meet the educational needs, training needs and social care needs of the children and young people concerned.

Therefore an argument could be made that Norfolk County Council is failing in this duty as it is insufficient in the provision of services to meet the educational needs, training needs and social care needs of the children and young people concerned.

You begin to understand why knowledge of the law can be so powerful when advocating for your children, young person or Adult.

Due Regard Duties

Another increasingly common form of duty is a duty imposed by Parliament on a public authority to have 'regard or due regard' to a particular set of needs. A key example of this duty is contained in Section 149 of the Equality Act 2010 – the public sector equality duty. This requires all public authorities to pay 'due regard' to a series of specified 'needs' being the need to eliminate discrimination, advance equality of opportunity (see short breaks) and foster good relations. A more up to date example is the duty in Section 19 of Children and Families Act 2014 that requires local authorities in carrying out their functions under Part 3 of the 2014 Act in the case of a child or young person to have regard to four matters including 'the need to support the child and his or her parent', or the young person in order to facilitate the development of the child or young person, and to help him or her achieve the best possible educational and other outcomes.

The use of Case Law to support a complaint

You can find a range of Case Law Summaries relating to Social Care on - <https://www.disabilityrightsuk.org/how-we-can-help/benefits-information/law-pages/case-law-summaries> although many might act against you, it is worth looking at previous case law as it is an indicator of success

From an Education and SEN point of view you need to consult IPSEA's case law pages - <https://www.ipsea.org.uk/what-you-need-to-know/important-case-law>

Using Guidance

There is a difference between statutory guidance i.e. guidance which has been issued in accordance with a legislative power or duty and Non-statutory guidance which is often 'practice guidance' or 'policy guidance'

Both the SEN Code of Practice and the Exclusions Guidance are **Statutory Guidance** and must be used with the corresponding primary and secondary legislation including but not withstanding any relevant regulations. Section 7 of the Local Authority Social Services Act 1970 (replaced from 1 April 2015 for adult social only by Section 78 of the Care Act 2014) requires a Local Authority to act under the general guidance of the Secretary of State.

- ★ The SEN Code of Practice is issued under Section 77 of the Children and Families Act
- ★ Mental Capacity Act Code of Practice is issued under Section 42 of the Mental Capacity Act 2005
- ★ The Care and Support Statutory Guidance is issued under Section 78 of the Care Act 2014
- ★ Working together to safeguard children is issued under
 - Section 7 of the Local Authority Social Services Act 1970
 - Section 10 of the Children Act 2004
 - Section 11 and 16 of the Children Act 2004
 - Section 175 of the Education Act 2002
- ★ Exclusion Guidance - Exclusion from maintained schools, Academies and pupil referral units in England is issued under
 - The Education Act 2002, as amended by the Education Act 2011;
 - The School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012;
 - The Education and Inspections Act 2006;
 - The Education (Provision of Full-Time Education for Excluded Pupils) (England) Regulations 2007

An example of **non-statutory guidance** would be National Frameworks.

Non-statutory guidance could be binding if

- ★ Produced at a high level
- ★ Involved those with considerable experience and expertise in the applicable area
- ★ Authorship of the guidance is established
- ★ You can show a quality and intensity of the work done in the production of the guidance
- ★ That you have considered the extent to which the (possibly competing) interests of those who are likely to be affected by the guidance have been recognised and weighed
- ★ That you have considered any more general public policy that the guidance has sought to promote and the express terms of the guidance itself

You then have to look at whether there is good reason for a Local Authority to depart from the national guidance

Using the Human Rights Act (European Convention on Human Rights – ECHR (until post Brexit))

The Human Rights Act 1998 makes it unlawful for a public authority to act in a way which would breach an ECHR right – see Section 6 of the Human Rights Act

The most relevant ECHR rights in the social welfare context are

- Article 5 – the right to liberty. In *Cheshire West and Chester Council v P* [2014] UKSC 19, the Supreme Court held that disabled people have the same right to liberty as the rest of the population. This means that deprivations of liberty in care settings (including potentially family homes) needs to be properly authorised to avoid a breach of Article 5
- Article 8 – the right to respect of family and private life, the home and correspondence. Article 8 ECHR incorporates protection for a person's human dignity see *McDonald v United Kingdom*, Application 4241/12, 20 May 2014.
- Article 14 – the non-discrimination provision
- Article 2 of the first protocol – the right to education – *the Supreme Court has held that the right is breached where a disabled child is denied access to educational facilities which were available to him/her* see *A v Essex* [2010] UKSC 33

Section 11 of the Children Act 2004 – the High Court said in *R (Sanneh) v Secretary of State for Work and Pensions* [2013] EWHC 793 (Admin) at [45]

‘there is no doubt that, in exercising its obligations under section 17, a local authority is bound to consider the Article 8 rights to respect for family life or all relevant family members, but particularly the child in need; and it is bound to do so “through the prism of Article 3(1) of the UN Convention on the rights of the child.

UN Convention on the rights of the child -

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

UN convention on the rights of persons with disabilities -

<http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>

Education – Complaints

This is not designed to cover SEN tribunals, we are aware that there are many reasons why you might wish to go through Mediation and/or tribunal related to EHC plans/Statements etc – Advice needs to be sought separately as these do not fall under the generalised complaints.

We are also aware of situations where children are being removed from current placements – if you do feel this applies please get in contact as we are in touch with those that can assist.

Your Complaint	Step 1: Complain To	Step 2: If not satisfied contact	Step 3: If still unsatisfied consider going
School not carrying out SEN responsibilities	Governing Body	(1) Ofsted (2) Information Commissioner; (3) If curriculum complaint, LA (4) Secretary of State for Education	To the High Court to judicially review a public body
LA not carrying out SEN responsibilities	LA internal complaints procedure Write a letter to: Director of Children’s Services – currently - Interim Executive Director of Children's Services - Matt Dunkley Norfolk County Council County Hall Martineau Lane Norwich Norfolk NR1 2DH	(1) Information Commissioner (2) Ombudsman (3) Secretary of State for Education	To the High Court to claim educational negligence

LA decision is wrong	For most cases, consider mediation	Appeal to the SEND Tribunal	To the Upper Tribunal on a point of law
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With regards to all Educational Complaints it is best to consult with advice from either the family support team at ASD Helping Hands and/or IPSEA.

IPSEA have detailed resources – make sure you follow this link and click on challenging decisions resources - <https://www.ipsea.org.uk/what-you-need-to-know/challenging-decisions>



[CHALLENGING DECISIONS](#)



CHALLENGING DECISIONS RESOURCES



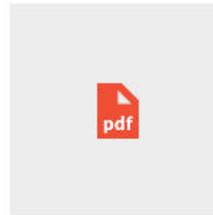
[CHALLENGING
TRIBUNAL
DECISIONS](#)

Following a Tribunal decision either party can apply to the Tribunal for the decision to be set aside, reviewed or appealed.



[COMPLAINTS
ABOUT SCHOOLS](#)

The first port of call for complaints about schools should usually be to the school itself.



[GOING TO THE
HIGH COURT](#)

This briefing looks at two types of court action: Judicial review and Educational negligence.



[LOCAL AUTHORITY
COMPLAINTS](#)

Complaints about any element of local authority (LA) children's services should be made to the most senior person, usually called Director of Children's Services.

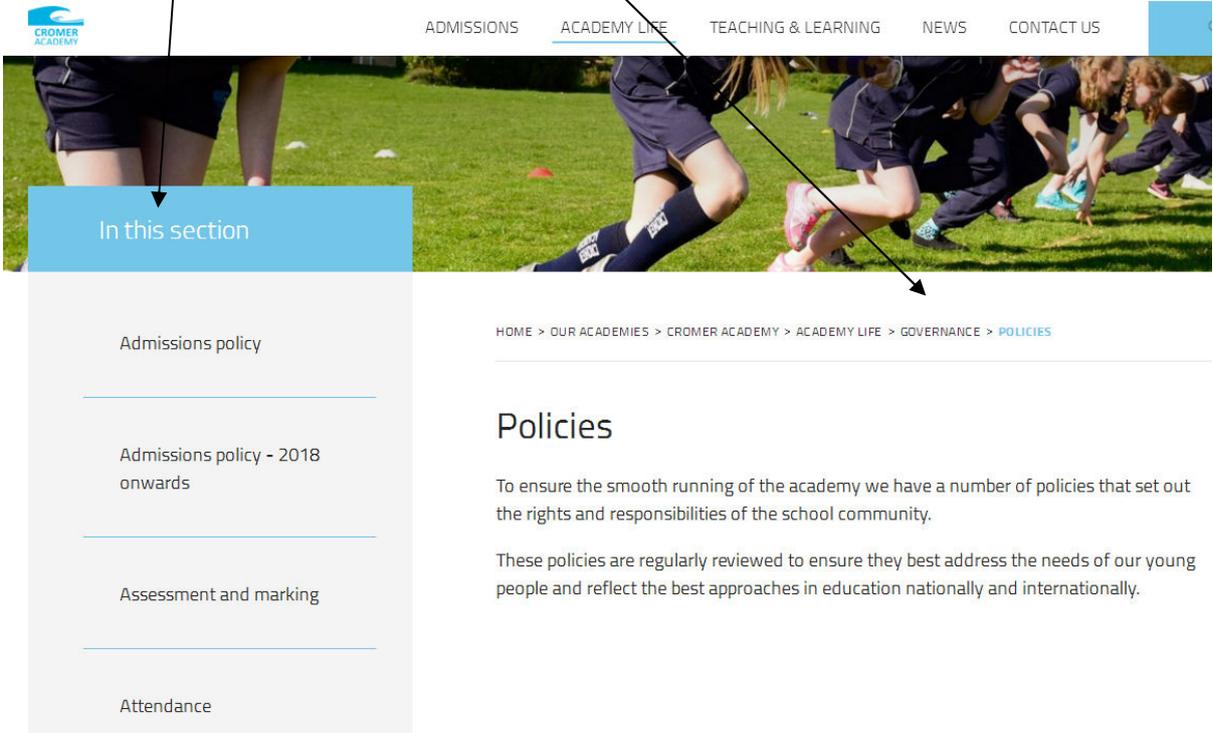
IPSEA links you to the following document –

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/489056/Best_Practice_Advice_for_School_Complaints_2016.pdf - Best Practice Advice for School Complaints Procedures 2016 Departmental advice for maintained schools, maintained nursery schools and local authorities January 2016

You need to ensure you access your school's website and locate their complaints policy –

“In accordance with Section 29 of the Education Act 2002, all local authority (LA) maintained schools must have and make available a procedure to deal with all complaints relating to their school and to any community facilities or services that the school provides.”

As you can see from the below the policies are found under the heading Governance this might not be the case for all schools so do have a good look round their website to ensure you haven't missed where the policies are...



The screenshot shows the website for Cromer Academy. At the top left is the logo for Cromer Academy. To the right is a navigation menu with the following items: ADMISSIONS, ACADEMY LIFE, TEACHING & LEARNING, NEWS, and CONTACT US. Below the navigation menu is a large banner image showing a group of students in school uniforms running on a grassy field. A blue box with the text "In this section" is overlaid on the left side of the banner. Below the banner is a list of policies: Admissions policy, Admissions policy - 2018 onwards, Assessment and marking, and Attendance. To the right of the banner is a breadcrumb trail: HOME > OUR ACADEMIES > CROMER ACADEMY > ACADEMY LIFE > GOVERNANCE > POLICIES. Below the breadcrumb trail is the heading "Policies" and two paragraphs of text. The first paragraph states: "To ensure the smooth running of the academy we have a number of policies that set out the rights and responsibilities of the school community." The second paragraph states: "These policies are regularly reviewed to ensure they best address the needs of our young people and reflect the best approaches in education nationally and internationally."

There is also a fantastic article in SEN Magazine about 'Making a Complaint to a school' - <https://senmagazine.co.uk/articles/articles/senarticles/how-to-complain-about-schools>

How to complain about schools

Martha Evans looks at how parents can seek redress if they are unhappy about issues at school

Many children with SEN will have their needs met by schools and local authorities without the need to make a formal complaint. If things do go wrong, though, it is very important that parents are able to use informal and formal complaints procedures to remedy the situation as soon as possible.

There are different avenues you can take when making a complaint; it very much depends on what your complaint is about. It can be confusing, so this article outlines the process of making complaints about a school and looks at some of the most common complaints pathways and procedures.

Your local parent partnership service (PPS) will be able to support and advise you through making a complaint. There is a PPS in every local authority and they provide confidential and impartial information, advice and support to parents and carers of children and young people with SEN.

Speak to the school

The first thing to do if you are unhappy with something at school is to speak to your child's class teacher and/or the school SENCO. There is a SENCO in every school and they are responsible for coordinating provision for children with SEN. If you are still unhappy, you should talk to the headteacher.

If you cannot resolve a problem informally, ask for a copy of the school's complaints procedure. By law, schools must have a procedure for parents to complain (Section 29 of the Education Act, 2002).

Complaining to the governing body

Every school has a governing body. In the case of an academy, this is known as the academy trust. School complaint procedures usually end with complaining to the governing body of the school. A complaint to the governing body should be addressed to the chair of governors (head of academy trust). If the school is a community or voluntary controlled school, (local authority maintained, run by the council) you could also send a copy of your letter to the director in charge of local education services, often called children's services.

Try to include precise details of dates, times, meetings and decisions that may help the governing body understand the substance of your complaint. Explain what harm you or your child has suffered as a result of the school's action or inaction. Say what you would like the governing body to do to put things right.

The governing body is likely to pass your complaint to a panel of governors. They may invite you to a meeting to put your case in more detail. They should follow the rules of natural justice. These say that:

- no member should have a vested interest in the outcome or any involvement in an earlier stage of the procedure
- each side should be given the opportunity to state their case without unreasonable interruption
- written material must have been seen by all parties
- if new issues arise, parties should be given the opportunity to consider and comment on them.

If the governing body does not give you a satisfactory response, you then have a number of options depending on the type of complaint you have. These are detailed below. It is important for all of the routes below that you have followed the school's and, if applicable, the local authority's complaints procedures first or that you are able to justify why you have not.

For more information about school governors, visit:
www.education.gov.uk/schools/leadership/governance

Complaining to the local authority

Local authorities (LAs) no longer have a role in general complaints about a school, although they do still hear curriculum complaints. If you are complaining about LA services (including complaints about assessment) you should do so to the most senior education officer. You must complain to the LA before taking the complaint further.

Complaining to the Information Commissioner

You can complain to the Information Commissioner if you have problems accessing school records, minutes of governors meetings, school policies or other public documents, or if you believe your child's school records have been disclosed unlawfully, are incorrect or out of date.

You should first exhaust the school or LA complaints procedure. There are different timescales for schools to reply to your requests:

- a copy of a child's educational record must be supplied within 15 school days. (The Education [Pupil Information] [England] Regulations, 2005 [SI 1437])
- other personal information must be supplied within 40 days of your written request. (Section 7 of the Data Protection Act, 1998)
- documents such as the school SEN Policy, school accessibility plan or governing body minutes must be provided within 20 working days (excluding school holidays) of your written request under the Freedom of Information Act, 2000.

Freedom of Information and Data protection complaints forms can be found at:
www.ico.gov.uk/complaints

Complaining to Ofsted

Ofsted is the body which inspects a range of public services including schools. Schools are inspected at least once every three years. Parents have a legal right to complain to Ofsted on the work of maintained schools, academies, city technology colleges, maintained nursery schools and non-maintained special schools.

Ofsted could investigate complaints about:

- quality of education and standards achieved
- inadequate provision for pupils with SEN
- neglect of pupils' personal development and wellbeing
- the quality of leadership and management. For example, whether the school spends its money well.

It is important to remember that you can only make complaints to Ofsted about issues that affect the whole school and not about an individual child.

Ofsted can call an immediate inspection of a school at short notice, if it feels your complaint is very serious. It can also call meetings with the school and the local authority.

You can complain to Ofsted online at:

<http://live.ofsted.gov.uk/onlinecomplaints>

Complaining to the Teaching Agency

If you have an allegation of serious misconduct against an individual teacher or headteacher, you can complain to the Teaching Agency.

www.education.gov.uk/schools/leadership/teachermisconduct

Complaining to the Secretary of State for Education

The Department for Education (DfE) will look at a complaint about a maintained school, academy or free school from anyone who is unhappy with the way in which a school is acting.

For the Secretary of State to intervene in a school following a complaint, he needs to be sure either that the school has acted or is proposing to act unreasonably in the exercise or performance of its functions under certain legislation, or that the school has failed to discharge a duty at all under certain legislation.

For guidance on making a complaint to the Secretary of State and a complaints form, go to:

www.education.gov.uk/schools/leadership/schoolperformance

Appeal to the SEND Tribunal

You can appeal to the SEND Tribunal about decisions that the local authority has made about your child, and disability discrimination by schools and local authorities.

The kind of decisions you can appeal against include refusal to carry out a statutory assessment, refusal to make a statement and parts 2, 3 and/or 4 of a statement.

In regards to schools, you can make a claim of disability discrimination under the Equality Act 2010 if your child is disabled within the meaning of that Act – not all children with SEN are disabled – and you feel they have been discriminated against.

You can find more about appealing to the SEND Tribunal at:

www.justice.gov.uk/tribunals/send/appeals

Complain to the Local Government Ombudsman

The Local Government Ombudsman (LGO) investigates complaints of injustice arising from maladministration by local authorities. They are able to consider the role of the school as part of a wider complaint against the local authority. They currently consider complaints about:

Special educational needs

You cannot complain to the Ombudsman about whether or not a local authority decides to assess your child, which is a matter for the SEND Tribunal. However you can complain about any delay in assessment, failure to carry out the provision set out in the statement or to carry out an annual review. The Ombudsman can look at the school's role in this. It may also be able to look at what the school has done in response to your child's SEN at school action plus, as long as you have previously complained to the local authority.

School admissions

The Ombudsman is not another level of appeal and cannot question decisions if they were taken properly and fairly by the admissions authority or the appeal panel.

You can complain if you think that a place at a school was refused because of some unfairness or mistake by the admissions authority, or if your appeal was handled incorrectly, or you have asked for an appeal and the admissions authority has not arranged an appeal hearing for you within a reasonable time.

You cannot complain to the LGO if the complaint is about an academy (unless that academy has transferred from a maintained school during the admissions process), independent (private) school or city Technology College.

If you are refused the school place you asked for and you want to pursue the matter, the first thing you need to do is to make an appeal to an independent appeal panel. The admissions authority should tell you how to do this.

If your child has a statement of SEN, you can appeal to the SEND Tribunal. The LGO could consider a complaint about any delay by a council in arranging an offer of a place at a school once the final statement has been issued.

Permanent exclusion from a school

The LGO cannot look at any aspect of exclusion prior to an appeal. When a decision has been reached, you can complain to the Ombudsman about the way in which the independent review panel has dealt with your case.

Once a child has been permanently excluded, the council has a duty to provide alternative education, and the LGO can look into how the council has carried out this duty.

For information of complaining to the Local Government Ombudsman, visit:

www.lgo.org.uk

Health – Complaint Routes

In Norfolk we have 5 Clinical Commissioning Groups – (CCG)

- Great Yarmouth and Waveney
- North Norfolk
- NHS Norwich
- NHS South Norfolk
- NHS West Norfolk

Depending on your CCG they all have different complaints procedures as you will see outlined on the following pages.

If you are trying to contest a refusal to access the Child and Mental Health Adolescent Service you need to

- Ask for a written reason for refusal
- This should outline the procedure for making a complaint

Also see below on relevant pages for making a complaint against Norfolk and Suffolk NHS Trust and the Norfolk Community Health and Care NHS Trust – **make sure you complain to the trust that offers that service.**

Making a complaint to the Norfolk and Suffolk NHS Trust - this would typically to do with services run through the Norfolk and Norwich Hospital and the Child and Mental Health Adolescent Services (CAHMS).

(See - <http://www.nsfh.nhs.uk/About-us/Documents/Complaints%20leaflet%208%20page%20DL%20.pdf>)

- Anyone who is receiving or has received our services can make a complaint, or you can tell us about your concerns on a patient's behalf, with their permission.
- Talk to staff about your concerns – usually the quickest way to resolve any issues you may have experienced is to speak to the staff at the time. Our staff are committed to ensuring you receive the best possible care and would welcome this opportunity. If you feel you need support to do this you can contact our PALS team for help.
- If you would like to complain formally – if you have talked to staff or asked our PALS team for help and you remain unhappy, you can complain formally by contacting our Patient Safety and Complaints Team by clicking here or using the contact details below:

Patient Safety and Complaints
Kingfisher House
Hellesdon Hospital
Drayton High Road
Norwich NR6 5BE
Telephone: 01603 421486
Email: complaints@nsft.nhs.uk

Making a complaint to the Norfolk Community Health and Care – this would typically be to do with Upton Road, ADHD clinic etc – any service found here - <http://www.norfolkcommunityhealthandcare.nhs.uk/The-care-we-offer/Service-search/a-to-z-of-services.htm?AccessLetter=C>

Who can make a complaint? Any person who has received a service from, or is affected by a decision made by, Norfolk Community Health and Care NHS Trust may make a complaint. *The patient's consent is required when a complaint is made on behalf of someone else.*

Complaints Officer:
NCH&C NHS Trust
Woodlands House,
Norwich Community Hospital,
Bowthorpe Road,
Norwich
NR2 3TU

Tel: 01603 697381

Email: complaints@nchc.nhs.uk

See also -

<http://www.norfolkcommunityhealthandcare.nhs.uk/Downloads/Complaints%20leaflet%2015%20a.pdf>

Great Yarmouth and Waveney CCG Complaints Procedure

Policy:

http://www.greatyarmouthandwaveneyccg.nhs.uk/store/documents/complaints_handling_policy_and_procedure.pdf

A complaint can be made under this policy by:

- Patients
- Patient representatives, e.g. a member of staff, a family member, a friend, an MP, or an agency working on behalf of the patient.
Note: If a complaint is being raised on behalf of a patient, consent must be obtained.

• Young People Young People are very important to us as a CCG and we welcome your comments and feedback.

You can also contact our PALS and Complaints Team who will be happy to talk with you about any questions or concerns you may have.

• Children In the case of a child, the representative must be a parent, legal guardian or other adult person who has care of the child. Where the child is in the care of a local authority or a voluntary organisation, the representative must be an authorised person identified by the local authority or voluntary organisation, and must be making the complaint in the best interests of the child.

• Complaining on behalf of another person In the case of a person who has passed away or a person who is unable by reason of physical and mental incapacity to make a complaint themselves, their representative must either be a relative, or another person who, in the opinion of Page 6 of 23 the Head of Quality and Safety, has or has had “sufficient interest” in the person’s welfare and is a suitable person to act on their behalf.

The CCG manages its business mindful of the statutory principles contained in the Mental Health Capacity Act 2005, revised 2007, detailed in appendix 1. 3.3

What should a complaint contain, and not contain?

Make sure you specify the background to the complaint including relevant dates, times and names; where possible. Any grievances or questions that the complainant wishes to be addressed should be clearly noted along with what outcomes you hope to achieve.

The CCG may reject any complaint that contains offensive or foul language or which expresses unwarranted personal abuse of staff. It is not helpful for complaints to be phrased in a sarcastic manner, and efforts at humour and irony in this context may be ill judged. Persistent or repeated complaints or complaints accompanied by aggressive or abusive behaviour will represent an abuse of the complaints procedure and will be excluded.

Making a complaint:

If ‘Local Resolution’ does not resolve matters and the complainant wishes to continue with their complaint they can do this verbally or in writing to the CCG, by:

- Telephone: 01502 719567 or Email: GYWCCG.Complaints@nhs.uk •

You can post a letter to “Complaints and PALS Team, NHS Great Yarmouth and Waveney CCG, Beccles House, 1 Common Lane North, Beccles, Suffolk, NR34 9BN”

North Norfolk CCG complaints procedure

Policy:

<http://www.northnorfolkccg.nhs.uk/sites/default/files/Complaints%20Policy%202013.pdf>

Who can complain?

A complaint can be made under this policy by:

- A patient or person affected or likely to be affected by the actions or decisions of the Group; or
- Someone acting on behalf of the patient or person concerned, with their consent; or
- Someone acting on behalf of a person mentioned above, and in any case where that person has died, or is a child, or is unable by reasons of physical or mental incapacity to make the complaint themselves.

Making a Formal Complaint

If Informal Resolution does not resolve matters and the complainant wishes to continue with their complaint they can do this orally or in writing (including by e-mail) to the

Complaints Manager for NHS North Norfolk Clinical Commissioning Group at the following address:

The Complaints Manager NHS North Norfolk - **make sure you direct it to complaints manager for correct CCG**

Anglia Commissioning Support Unit
Lakeside 400
Old Chapel Way
Broadland Business Park
Thorpe St Andrew
Norwich
NR7 0WG

Telephone: 01603 257017

E-mail: angliacsu.customerservices@nhs.net

NHS Norwich CCG Complaints Procedure

Policy: <http://www.norwichccg.nhs.uk/publications-policies-and-documents/corporate-information/361-complaints-handling-policy-and-procedure/file>

Who can complain?

A complaint can be made under this policy by:

- a patient or person affected or likely to be affected by the actions or decisions of the Group;
- or someone acting on behalf of the patient or person concerned, with their consent;
- Or someone acting on behalf of a person mentioned above, and in any case where that person has died, or is a child, or is unable by reasons of physical or mental incapacity to make the complaint themselves.

Local Resolution

The first stage of the NHS complaints procedure is called 'Local Resolution' and complaints should be made, in the first instance, to the organisation providing the service.

Local Resolution aims to resolve complaints quickly and as close to the source of the complaint as possible, using the most appropriate means; for example, perhaps, the use of conciliation.

Local Resolution enables concerns to be raised immediately by speaking to a member of staff who may be able to resolve concerns without the need to make a more formal complaint.

Making a Formal Complaint

If Local Resolution does not resolve matters and the complainant wishes to continue with their complaint they can do this orally or in writing (including e-mail) to the Complaints Manager for NHS Norwich CCG at the following address:

The Complaints Manager NHS Norwich CCG – **make sure you direct it to complaints manager for correct CCG**

Commissioning Support Unit
Lakeside 400
Old Chapel Way
Broadland Business Park
Thorpe St Andrew
Norwich
NR7 0WG

Tel - 01603 257093/257017

Email – pals@norfolk.nhs.uk and/or NELCSU.AngliaComplaints@nhs.net

South Norfolk CCG Complaints Procedure

Policy:

<http://www.southnorfolkccg.nhs.uk/sites/default/files/pdf/14%2010%2010%20%20Complaints%20Policy%20SNCCG%20draft%20V1.pdf>

Who can complain?

A complaint can be made under this policy by:

- A patient or person affected or likely to be affected by the actions or decisions of the Group;
- or someone acting on behalf of the patient or person concerned, with their consent;
- or someone acting on behalf of a person mentioned above, and in any case where that person has died; or is a child; or is unable by reasons of physical or mental incapacity to make the complaint themselves.

Local Resolution

The first stage of the NHS complaints procedure is called 'Local Resolution' and complaints should be made, in the first instance, to the organisation providing the service.

Local Resolution aims to resolve complaints quickly and as close to the source of the complaint as possible, using the most appropriate means; for example, perhaps, the use of conciliation.

Local Resolution enables concerns to be raised immediately by speaking to a member of staff who may be able to resolve concerns without the need to make a more formal complaint.

Making a Formal Complaint

If Local Resolution does not resolve matters and the complainant wishes to continue with their complaint they can do this orally or in writing (including e-mail) to the Complaints Manager for NHS South Norfolk CCG at the following address:

The Complaints Manager NHS South Norfolk - **make sure you direct it to complaints manager for correct CCG**

Commissioning Support Unit
Lakeside 400
Old Chapel Way
Broadland Business Park
Thorpe St Andrew
Norwich
NR7 0WG

Tel - 01603 595857

Email – angliacsu.customerservices@nhs.net

West Norfolk CCG Complaints Procedure

Policy:

<http://www.westnorfolkccg.nhs.uk/sites/default/files/pdf/WNCCG%20Complaints%20Policy.pdf>

Who can complain?

- Patients themselves or a representative eg a member of staff, family member, friend, MP or other agency on behalf of the patient, can raise complaints and concerns. It is important that the person is acting with the knowledge and consent of the patient.

The CSU Complaints Team will request that the patient is asked by the representative to sign a consent form.

- Complaints can be made by a person acting on behalf of
 - a) A person who has died
 - b) A child
 - c) A patient who is unable by reason of physical or mental incapacity to make the complaint himself/herself.

In the case of a person who has died or who is incapable, their representative must be a relative or other person who, in the opinion of the Complaints Manager, had or has a “sufficient interest” in his/her welfare and is a suitable person to act as representative.

In the case of a child, a suitable representative would normally be a parent, guardian or other adult person who has care of the child, or one who is authorised by the local authority/voluntary organisation in the case of children in care.

Where a person makes a complaint acting on behalf of a child, the Complaints Manager must not consider the complaint unless he/she is satisfied that there are reasonable grounds for the complaint being made by a person acting on behalf of the child and must notify the person if not satisfied

Making a Formal Complaint

The CCG is working with NHS North and East London Commissioning Support Unit to investigate and record Compliments, Complaints, Comments and Concerns from patients and members of the public. This process allows for an overarching awareness of all local issues and concerns, and for the opportunity of shared learning alongside our colleagues at other Clinical Commissioning Groups in Norfolk. All comments and concerns are initially handled by the Customer Services Team at the NHS North and East London Commissioning Support Unit Anglia. If you wish to make a formal complaint, you can do this by contacting the complaints team:

Contact:

Complaints Manager - NHS West Norfolk Clinical Commissioning Group
St James
King's Lynn
PE30 5NU

Email: nelcsu.angliacomplaints@nhs.net

Telephone: 01603 595857

Social Care Formal Complaints Routes

With regards to Social Care in Norfolk you have two options depending on age of individual

For a complaint with respect to a child or young person under 18

Director of Children's Services – currently -
Interim Executive Director of Children's Services - Matt Dunkley
Norfolk County Council
County Hall
Martineau Lane
Norwich
Norfolk
NR1 2DH

For a complaint with respect to an adult

Director of Adult Services – currently –
Executive Director of Adult Social Services - James Bullion
Norfolk County Council
County Hall
Martineau Lane
Norwich
Norfolk
NR1 2DH

I would always advise to write first and if you do not here anything upload the letter onto the following

<https://online.norfolk.gov.uk/complaints/>

When you get to the below box come up make sure you name the above Directors and state they have not contacted you regarding your written complaint submitted.

.....
Your Progress: 1. Your Details | 2. Contact Details | 3. Complaint | 4. Upload Documents | 5. NCC Contact | 6. Desired Outcome |
7. Special Assistance | 8. Information | 9. Finish
.....

NORFOLK COUNTY COUNCIL CONTACT

Have you contacted anyone at the County Council already about this issue?

Please give their name

What happened as a result of this contact?



Previous

Next

Key Social Care Complaints

Suggested Wording to be used for Parent Carer Needs Assessment - Failure to assess under a parent carer needs assessment

As you are aware and as is publicised on Norfolk County Councils' own Local Offer Website you have admitted as Norfolk County Council that you have a duty under legislation to assess 'parent carers' The Children Act 1989 defines a 'parent carer' as an adult who provides or intends to provide care for a disabled child for whom the person has parental responsibility.

The legislation Norfolk County Council needs to adhere to is: - Children Act 1989 s17ZA(3) inserted by Children's and Families Act 2014 S.96

You do qualify if you are a carer of a child under the age of 18

since the Carers (Recognition and Services) Act 1995 s1 placed (and continues to place) a duty on authorities to assess all carers (regardless of their age) who were/are providing (and continues to place) a duty on authorities to assess all carers (regardless of their age) who were/are providing substantial amounts of care on an unpaid basis. Through amendment, the 2014 act now places significant additional responsibilities on authorities including Norfolk County Council towards parent carers CA 1989 ss17ZD and 17ZE (inserted into Children's and Families Act 2014 s.97)

The legislation states that Norfolk County Council needs to assess parent carers on the 'appearance of need' i.e. if it appears to Norfolk County Council that a parent carer may have needs for support (or an assessment is requested by the parent). Such assessments are referred to as 'parent carer's needs assessments'. After undertaking the assessment Norfolk County Council must then determine whether the parent has needs for support and, if so what those needs are.

Parent Carer's needs assessments must include 'an assessment of whether it is appropriate for the parent carer to provide, or continue to provide, care for the disabled child in light of the parent carer's needs for support, other needs and wishes and must also have regard to:-

- the wellbeing of the parent carer, and
- the need to safeguard/promote the welfare of the disabled child and any other child for whom the parent carer has parental responsibility

The requirement to consider 'well-being' means that Norfolk County Council also has to consider the following factors:-

- Personal dignity
- Physical and mental health and emotional well-being
- Protection from abuse and neglect
- Control by the individual over day to day life (including over carer and support, or support provided to the individual and the way in which it is provided)
- Participation in work, education, training or recreation
- Social and economic well-being
- Domestic, family and personal relationships
- Suitability of living accommodations
- The individual's contribution to society

In relation to combining a child in need assessment with a parent carer needs assessment Norfolk County Council must demonstrate that (a) It does not have a blanket policy of combining such assessments in every case – i.e. that it will undertake separate assessments in appropriate cases (b) The parent carer's specific needs have been identified and addressed; and (c) It has had specific regard to the well-being requirements for the parent carer

Suggested Wording to be used for Short Breaks – Ineligibility for Short Breaks

I would like to make reference to the following statutory guidance

[https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/271205/Short_breaks - how to safeguard and promote the welfare of disabled children.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/271205/Short_breaks_-_how_to_safeguard_and_promote_the_welfare_of_disabled_children.pdf)

With regards to [Insert Child's name]'s family not being able to be eligible for any respite/short breaks provision, this guidance provides a lengthy list of factors which local authorities including Norfolk County Council should take into account in determining whether short breaks are to be provided under the Children Act 1989 s17(6) and which we feel have been overlooked on numerous occasions.

- Any particular vulnerabilities of child
- The length of time away from home and the frequency of such stays
- Whether short breaks are to be provided in more than one place
- The views of the child and views of parent

Children Act 1989 Schedule 2 para 6(1)(c) requires Norfolk County Council to provide services designed to assist family carers of disabled children 'to continue to [provide care], or to do so more effectively, by giving them breaks from caring. We feel that this legislation again has been overlooked due to discrimination on the basis of Sterling's diagnosis and failure to adequately assess need.

Under Breaks for Carers of Disabled Children Regulations 2011 SI No 707 when discharging this duty, they must have regard to the needs of family carers: ...who would be able to provide care for their disabled child more effectively if breaks from caring were given to them to allow them:

- (i) Undertake education, training or any regular leisure activity
- (ii) Meet the needs of other children in the family more effectively or
- (iii) Carry out day to day tasks which they must perform in order to run their household (reg 3(b)) Again, these regulations have also been overlooked when assessing Sterling Smith for eligibility for Short Breaks.

Suggested Wording to be used for Young Carer's Assessments – Failure to assess under a Young Carer's Assessment

Norfolk County Council in not assessing [insert sibling's name] 'young carer' needs is acting unlawful since there is a duty placed on such authorities to assess all carers (regardless of their age) who are providing substantial amounts of care on an unpaid basis; a duty referred to on number of occasions by the courts and ombudsman

See

Complaint No 07B 04696 and 07B 10996 against Croydon LBC, 16 September 2009 and see also Cerebra Legal Entitlements Research Project: Digest of Cases 2014 (Kumar's Story at p.20 and Peter's story at p.24)

The 2014 Children's and Families Act explicitly identifies 'young carers' as right's holders: people for whom the local authority have a duty to assess and where their needs call for support – a duty to provide this under the Children's Act 1989 S17ZA(3) inserted by the Children's and Families Act s.96

Local authorities must undertake assessments as to whether a young carer within their area has support needs (and if so, what those needs are) if (CA 1989 S17ZA (1) – (a) It appears to the authority that the young carer may have needs for support, or (b) The authority receive a request from the young carer or parent of the young carer to assess the young carer's needs for support

When undertaking such assessment Norfolk County Council must involve the young carer, his or her parents (CA1989 s17ZB(2)) and any other person any of them wish to be involved (CA 1989 s17ZA(9)) and must have regard to (CA1989 s17ZA(8))

(a) The extent to which the young carer is participating in or wishes to participate in education, training or recreation, and

(b) The extent to which the young carer works or wishes to work

Young Carer's (needs assessment) Regulations 2015 SI No 527 made pursuant to the Children Act 1989 s17ZB(8) provide the details that govern Norfolk County Council's 'young carer' assessment obligations. These require Norfolk County Council to undertake such assessment in a manner 'which is appropriate and proportionate to the needs and circumstances of the young carer' and that in doing so they have particular regard to

(a) The young carer's age, understanding and family circumstances

(b) The wishes and feelings and preferences of the young carer

(c) Any differences of opinion between the young carer, the young carer's parents and the person cared for, with respect to the care which the young carer provides (or intends to provide) and

(d) The outcome the young carer seeks from the assessment

See Regulation 2(2)

Suggested Wording for Failure to carry out Personal Budget Assessment for Adults

Under the Care Act 2014 Norfolk County Council **must**:

- **Carry out an assessment** of anyone who appears to require care and support, regardless of their likely eligibility for state-funded care
- Focus the assessment on the person's needs and how they impact on their wellbeing, and the outcomes they want to achieve
- involve the person in the assessment and, where appropriate, their carer or someone else they nominate
- provide access to an independent advocate to support the person's involvement in the assessment if required
- consider other things besides care services that can contribute to the desired outcomes (e.g. preventive services, community support)
- use the new national minimum threshold to judge eligibility for publicly funded care and support

An Example of a letter to Children's Social Services

[insert your address]

[insert date]

Dear Interim director of Norfolk County Council (see above for details),

We are the parents of [insert child's name]'s date of birth [insert]. [Insert name] diagnosis is [insert diagnosis] (optional you can add in any additional information such as "remains under investigation for an Autistic Spectrum Disorder")

The concerns below have been raised following what we believe to be illegal practices undertaken by Norfolk County Council with respect to the current legislation inclusive of the Children's and Families Act 2014 and subsequent regulations and previous legislation i.e. the Children's Act 1989.

The concerns are

1. Failure to assess [Insert mother's name] (explain connection to child) and [insert father's name] (explain connection to child) a 'Parent Carer Needs Assessment' due to the nature of their caring roles in relation to [insert child's name] disabilities
2. Ineligibility of [insert child's name] and his family for Short Breaks service from the Children's with Disabilities Team and failure with regard to this to ensure that Sterling has his needs met through a Child in Need plan.
3. Failure to assess [insert sibling name] (explain connection to child) d.o.b [insert date] for a 'Young Carer's Needs Assessment' in relation to his caring role with regards to his/her brother/sister (delete as applicable) [insert name]

1. Parent Carer Needs Assessment

As you are aware and as is publicised on Norfolk County Councils' own Local Offer Website you have admitted as Norfolk County Council that you have a duty under legislation to assess 'parent carers'

The Children Act 1989 defines a 'parent carer' as an adult who provides or intends to provide care for a disabled child for whom the person has parental responsibility.

The legislation Norfolk County Council needs to adhere to is:

- Children Act 1989 s17ZA(3) inserted by Children's and Families Act 2014 S.96

[Give details of any previous request for a parent carer needs assessment]

If Norfolk County Council state you do not qualify because it was for carers of adults and if it was for carers of children then every parent would be asking for one. Then the below applies

This is unlawful since the Carers (Recognition and Services) Act 1995 s1 placed (and continues to place) a duty on authorities to assess all carers (regardless of their age) who were/are providing substantial amounts of care on an unpaid basis. Through amendment, the 2014 act now places significant additional responsibilities on authorities including Norfolk

County Council towards parent carers CA 1989 ss17ZD and 17ZE (inserted into Children's and Families Act 2014 s.97)

The legislations states that Norfolk County Council needs to assess parent carers on the 'appearance of need' i.e. if it appears to Norfolk County Council that a parent carer may have needs for support (or an assessment is requested by the parent). Such assessments are referred to as 'parent carer's needs assessments'. After undertaking the assessment Norfolk County Council must then determine whether the parent has needs for support and, if so what those needs are.

Parent Carer's needs assessments must include 'an assessment of whether it is appropriate for the parent carer to provide, or continue to provide, care for the disabled child in light of the parent carer's needs for support, other needs and wishes and must also have regard to:-

- the wellbeing of the parent carer, and
- the need to safeguard/promote the welfare of the disabled child and any other child for whom the parent carer has parental responsibility

The requirement to consider 'well-being' means that Norfolk County Council also has to consider the following factors

- Personal dignity
- Physical and mental health and emotional well-being
- Protection from abuse and neglect
- Control by the individual over day to day life (including over carer and support, or support provided to the individual and the way in which it is provided)
- Participation in work, education, training or recreation
- Social and economic well-being
- Domestic, family and personal relationships
- Suitability of living accommodations
- The individuals contribution to society

In relation to combining a child in need assessment with a parent carer needs assessment Norfolk County Council must demonstrate that

(a) It does not have a blanket policy of combining such assessments in every case – i.e. that it will undertake separate assessments in appropriate cases

(b) The parent carer's specific needs have been identified and addressed; and

(c) It has had specific regard to the well-being requirements for the parent carer

2. Ineligibility of Short Breaks

If you received a letter saying your application has been declined then:-

- Copy the specific wording used to refused the application

Add the following:-

It is known and constantly challenged with Norfolk County Council that majority of children and young people with ADHD, Sensory Processing Disorder and/or Autistic Spectrum Conditions are being discriminated against because the assessors in the CWD team cannot fully grasp the gravity of such conditions and do not feel that these are severe or profound. Children and young people with an Autistic Spectrum Disorders' are more likely to be refused access to this services which can be considered to be disability discrimination and

failure to assess 'need' under the Equality Act 2010 and under the Children's and Families Act 2014.

We are aware as the parents of [insert child's name] that the process in which Norfolk County Council assesses a child or young person for Short Breaks is changing; however, we strongly feel that this has caused [insert child] to be caught in the transfer. It is disheartening to know that in approx. 2-3months [insert child] could become eligible for services under the Short Breaks Scheme. Furthermore, I would like to make reference to the following statutory guidance

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/271205/Short_breaks_-_how_to_safeguard_and_promote_the_welfare_of_disabled_children.pdf

With regards to [insert child] not being able to be eligible for any respite/short breaks provision, this guidance provides a lengthy list of factors which local authorities including Norfolk County Council should take into account in determining whether short breaks are to be provided under the Children Act 1989 s17(6) and which we feel have been overlooked on numerous of occasions.

- Any particular vulnerabilities of child
- The length of time away from home and the frequency of such stays
- Whether short breaks are to be provided in more than one place
- **The views of the child and views of parent**

Children Act 1989 Schedule 2 para 6(1)(c) requires Norfolk County Council to provide services designed to assist family carers of disabled children 'to continue to [provide care], or to do so more effectively, by giving them breaks from caring. We feel that this legislation again has been overlooked due to discrimination on the basis of [insert child] diagnosis and failure to adequately assess need.

Under Breaks for Carers of Disabled Children Regulations 2011 SI No 707 when discharging this duty, they must have regard to the needs of family carers:

...who would be able to provide care for their disabled child more effectively if breaks from caring were given to them to allow them:

- (i) Undertake education, training or any regular leisure activity
- (ii) Meet the needs of other children in the family more effectively or
- (iii) Carry out day to day tasks which they must perform in order to run their household (reg 3(b))

Again, these regulations have also been overlooked when assessing [insert child] for eligibility for Short Breaks.

3. Young Carer's Need Assessment

Norfolk County Council in not assessing [insert sibling's name] 'young carer' needs is acting unlawful since there is a duty placed on such authorities to assess all carers (regardless of their age) who are providing substantial amounts of care on an unpaid basis; a duty referred to on number of occasions by the courts and ombudsman

See

Complaint No 07B 04696 and 07B 10996 against Croydon LBC, 16 September 2009 and see also Cerebra Legal Entitlements Research Project: Digest of Cases 2014 (Kumar's Story at p.20 and Peter's story at p.24)

The 2014 Children's and Families Act explicitly identifies 'young carers' as right's holders: people for whom the local authority have a duty to assess and where their needs call for support – a duty to provide this under the Children's Act 1989 S17ZA(3) inserted by the Children's and Families Act s.96

Local authorities must undertake assessments as to whether a young carer within their area has support needs (and if so, what those needs are) if (CA 1989 S17ZA (1) –

- (a) It appears to the authority that the young carer may have needs for support, or
- (b) The authority receive a request from the young carer or parent of the young carer to assess the young carer's needs for support

When undertaking such assessment Norfolk County Council must involve the young carer, his or her parents (CA1989 s17ZB(2)) and any other person any of them wish to be involved (CA 1989 s17ZA(9)) and must have regard to (CA1989 s17ZA(8))

- (a) The extent to which the young carer is participating in or wishes to participate in education, training or recreation, and
- (b) The extent to which the young carer works or wishes to work

Young Carer's (needs assessment) Regulations 2015 SI No 527 made pursuant to the Children Act 1989 s17ZB(8) provide the details that govern Norfolk County Council's 'young carer' assessment obligations. These require Norfolk County Council to undertake such assessment in a manner 'which is appropriate and proportionate to the needs and circumstances of the young carer' and that in doing so they have particular regard to:

- (a) The young carer's age, understanding and family circumstances
- (b) The wishes and feelings and preferences of the young carer
- (c) Any differences of opinion between the young carer, the young carer's parents and the person cared for, with respect to the care which the young carer provides (or intends to provide) and
- (d) The outcome the young carer seeks from the assessment

See Regulation 2(2)

In conclusion and related to all 3 points explored above us as [insert child]'s parents are requesting under the legal rights outlined above the following:-

- A full 'parent carer' needs assessment to be undertaken
- Access to short breaks/respite to be looked at by a director of children's service in relation to potential disability discrimination due to [insert child]'s conditions.
- A full assessment for Short Breaks/Respite to be completed as soon as the Resource Allocation System is live and contact to be made from this service to the parents to ensure that they are fully involved and aware of when this will happen and have a point of contact with regards to this.
- A young carer's needs assessment to be completed in relation to [insert sibling's name]

We would like a response to the above queries within the next 14 days, failure to give a written response will be met with escalation through Norfolk County Council's complaints process.

Yours Sincerely

Parent Carer Needs Assessments – Template letter following failure to carry out parent carer needs assessments as part of a joint social work assessment

In Norfolk Social Services are meant to be combining both a social work assessment (child in need s.17) and a Parent Carer Needs Assessment. Use the below if you have had a Child in Need Assessment but do not feel your needs as a parent have been considered.

Insert your address here

Insert Date

Dear Matt Dunkley,
Interim Executive Director, Children's Services

The Children and Families Act Section 97 inserts into the Children Act 1989 Section 17ZC including:

17ZF Consideration of parent carers' needs assessments

A local authority that carries out a parent carer's needs assessment must consider the assessment and decide—

- (a) Whether the parent carer has needs for support in relation to the care which he or she provides or intends to provide;
- (b) Whether the disabled child cared for have needs for support;
- (c) If paragraph (a) or (b) applies, whether those needs could be satisfied (wholly or partly) by services which the authority may provide under section 17; and
- (d) If they could be so satisfied, whether or not to provide any such services in relation to the parent carer or the disabled child cared for.”

Although legislation provides for the combination of our parent carer' assessment and [insert child's name] child in need assessment We make reference to the initial assessment and do not feel that the Local Authority has adequately and lawfully identified and addressed our parent carer's specific needs. The Local Authority has not provided adequate reason as to why we are not eligible for these to be addressed.

Under the parenting capacity section of the initial assessment it has completely failed to grasp our 'parent carer' needs. Furthermore, the Local Authority can also not show that they have had specific regard to the well-being requirements for the parent carer as outlined in the Children and Families Act S17D subsection (10) and (11)

(10)A local authority in carrying out a parent carer's needs assessment must have regard to—

- (a) The well-being of the parent carer, and
- (B) The need to safeguard and promote the welfare of the disabled child cared for and any other child for whom the parent carer has parental responsibility.

(11)In subsection (10) “well-being” has the same meaning as in Part 1 of the Care Act 2014. When looking at the Care Act 2014 s1 it outlines the following:

Care Act 2014 Section 1: Promoting individual well-being

(1) The general duty of a local authority, in exercising a function under this Part in the case of an individual, is to promote that individual's well-being.

(2) "Well-being", in relation to an individual, means that individual's well-being so far as relating to any of the following—

- (a) personal dignity (including treatment of the individual with respect);
- (b) Physical and mental health and emotional well-being;
- (c) Protection from abuse and neglect;
- (d) control by the individual over day-to-day life (including over care and support, or support, provided to the individual and the way in which it is provided);
- (e) Participation in work, education, training or recreation;
- (f) Social and economic well-being;
- (g) Domestic, family and personal relationships;
- (h) suitability of living accommodation;
- (i) the individual's contribution to society.

We would strongly ask that the Local Authority assesses our 'wellbeing' using the correct legal tests (as outlined above) and subsequently either addresses the identified need or provides us with written reasoning as to why such needs cannot be addressed by Norfolk County Council.

Yours Sincerely

Your name

Case Studies

I have been very lucky to have been given the below case studies to assist you to understand how cases are put forward to the Local Government Ombudsman.

For Data Protection Purposes Names have been removed

Key things from the case studies and peoples experiences

- When complaining to the Local Authority make sure you state this is a 'formal complaint under and insert the relevant legislation
- Make each complaint separately
- Try and cite the individual Act and the section of whatever Act you are complaining that has not been followed – DO YOUR RESEARCH
- If there is any delay, ensure you complain about the delay as well
- If your complaint is upheld always refer these to the LGO as well
- The main thing with the LGO is proving that you have exhausted the Norfolk County Council's complaints process as they won't accept the case if they think Norfolk County Council are still dealing with it.
- If your case gets knocked back initially by the LGO you can go back to Norfolk County Council complaints and asked if they would escalate to the second tier of their complaints procedure. If they say no and get them to write you a letter which you can then use to prove to the LGO that you couldn't get any further with the Local Authority complaints process.
- The LGO should notify you they have allocated a case worker but this can take 6 weeks or so
- You should then receive a phone call from the case worker/investigator – THIS IS THE CRUCIAL STAGE AS THIS MIGHT BE YOUR ONLY CHANCE TO SUBMIT EVIDENCE FOR THE LGO TO TAKE INTO ACCOUNT
- Once the LGO has then contacted Norfolk County Council they will not take additional evidence into account
- The LGO then will write a draft recommendation which will be sent to you and the LA for agreement
- This is a good opportunity to offer amendments and dispute the recommended compensation amounts if you feel them to be insufficient.
- Once the LGO has made a decision ensure Norfolk County Council adheres to it, this might require you to go back to the LGO to force Norfolk County Council to adhere to outcome.

Case Study Number One

The complaint

1. Mrs M complains that the Council failed to ensure that her son, P, received the provision as required by his Education Health and Care Plan while he attended his mainstream primary school between February and July 2016. Mrs M alerted the Council to the situation but it failed to take action to ensure the school made the provision, and had the funds to do so.
2. Mrs M complains also that after P stopped attending school following an early annual review in June 2016, no suitable alternative provision was made for him for the rest of the summer term.

The Ombudsman's role and powers

3. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. She must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, she may suggest a remedy.

(Local Government Act 1974, sections 26(1) and 26A(1))

4. The Ombudsman cannot investigate complaints about what happens in schools.

(Local Government Act 1974, Schedule 5, paragraph 5(b))

How I considered this complaint

5. I discussed Mrs M's complaint with her on the telephone. I wrote to the Council and shared its response with her. I considered carefully all the information provided and the relevant law and guidance.

What I found

Legal background

6. Councils have a duty under the Education Act 1996 to assess a child where there is evidence he may have special educational needs (SEN). Once an assessment determines SEN provision for a child with special educational needs, the council has a duty to ensure it is in place and is maintained. The needs and provision are set out in a statement or an Education Health and Care Plan (EHCP) under the Children and Families Act 2014. The council must ensure the EHCP is reviewed annually and implement any changes from the review.

7. Councils are not obliged to provide exactly what each parent requests, but they should be able to explain clearly why they consider a suggested provision meets the assessed needs of any individual child. They must also take steps to ensure that the views of the child or young person are properly recorded and considered when planning provision for them.

8. Schools have a duty to put in place the provision set out in the statement on a day to day basis. They also have a duty to identify and support all children with SEN appropriately.

9. The Council has explained its arrangements for funding special educational needs. It says schools receive directly from central government the first £6000 of the cost of a child's

special educational needs provision. Schools are arranged in clusters. Each cluster receives additional funding for special educational needs. If a school needs funding to meet the needs of an individual child it applies to the cluster for top up funding.

Events leading to the complaint

10. P is nine years old. He now attends a special independent school for children on the autism spectrum. He also has a diagnosis of attention deficit and hyperactivity disorder. P has cognitive processing difficulties and a poor short term memory. He has struggled with basic skills including reading and spelling. P also is hypersensitive to some kinds of noise and can be easily distracted. He suffers from a high level of anxiety.

11. P was attending a mainstream primary school from September 2014. His EHCP was issued on 16 February 2016. It set out his special educational needs and the provision needed to meet them. It said P should have opportunities for adult support. There would be an extra adult (learning support assistant) in the classroom to provide 'hover support'. It would allow P to have individual attention at all times. There would be structured provision to help with the curriculum, including teaching in small groups. Each day P would be collected for lunch 10 minutes early. He should have breaks for movement every 20 minutes throughout the day. Over the year P also should have 12 sensory integration sessions.

12. From February 2016 Mrs M was concerned that all the support for P was not in place. On 24 March she wrote to the Council's complaints' team. She was concerned particularly that the structured support in lessons was not being delivered. She also referred to the lack of 'hover support' to provide individual support for P. Mrs M said she had spoken to the head teacher. Mrs M understood it was very difficult for the school to deliver the provision with the amount of funding available.

13. The Council asked the head teacher for her comments. The head teacher replied on 11 April. She said the school could not provide the level of one to one support Final decision 3 required by P's EHCP. She could not obtain further funding from the cluster because it did not have enough funds. The head teacher set out the support P received. One to one, paired work or small groups in all English and maths lessons; Supervision at lunch time and at lego club; From this term, one hour a week of one to one support with a teaching assistant and one hour with a qualified teacher. The head teacher explained the school could not provide 'hover' support to give individual attention to P at all times. It was not possible to provide supervision for P to work outside the classroom in a quiet area in the afternoons. To meet P's need fully the school would need an extra £3,800 a year.

14. The Council's complaints' officer replied to Mrs M on 25 April. He said the school received £6000 to meet P's special educational needs. However, the head teacher had explained that there was a shortfall of £3,800 currently in the funding available for P. An additional £500 was available from the cluster funding. The Council accepted it was not a level of funding needed to meet high levels of special needs. The Head of the Education Inclusion Service was looking into the matter in discussion with the cluster.

15. The complaints' officer copied his response to the head teacher. She replied on 10 May, commenting as follows:

16. 'You mention that the school receives funding from central government to meet the first £6000 of the cost of special educational needs for [P]. I am concerned this statement is very confusing for his parents. I understand there is an expectation that we must fund the first £6000 of support for SEND children but it is misleading to imply this funding is ring fenced. Our entire SEND Memorandum 2016/2017 (included in the budget share) was £32,685 and we have 24 children on our SEND register!'

17. The head teacher asked for information about how to apply for exceptional funding to meet a shortfall.

18. The school excluded P for two days after an incident involving another pupil. Mrs M says it happened during an extended lunch break without supervision. P normally would have received support from a learning support assistant at that time. Mrs M was unhappy with the school's approach to the matter.

19. The Council arranged an early annual review meeting on 7 June 2016. The Council's EHCP co-ordinator attended with her manager. The record of the meeting does not fully explain what was discussed or decided. Mrs M says everyone agreed P needed a different placement. She says the only alternative in the meantime seemed to be for her to teach P at home. Mrs M says she took it on because there was no other choice. She found it stressful. She had no materials or support for the first five weeks. She then received an e-learning package for the final three weeks of term. But it was unsuitable for P.

20. The complaints' officer wrote to Mrs M again on 10 June about her complaint. He apologised for the fact that she had become involved in what should have been a discussion between the Council and the school about funding arrangements. The Council would expect any child to be supported appropriately by the school.

21. In September P started at an independent school for children on the autism spectrum. Mrs M says P did not receive the one to one support he needed at his mainstream school. The Council was aware of this.

Analysis

22. The Council's funding arrangements for schools to deliver provision for children with EHCPs generally would not be a matter for the Ombudsman. But the Council has overall responsibility to make sure the child has the provision he needs. In P's case his school acknowledged it could not provide all the support exactly as required by his EHCP. The head teacher explained she did not have the funds to do so. In effect, there was a disagreement between the Council and the school. Mrs M was drawn into it, for which the Council later apologised.

23. Meanwhile, P got into difficulties at school and received an exclusion. Mrs M sees this as a result of the lack of provision. It is not for me to speculate about that. It was right to arrange an early review. Unfortunately there is no proper record of the meeting. I assume the meeting agreed the school could no longer meet P's needs and he should not return there. The Council would look for another school placement for P. I can understand Mrs M's concern that P's needs had not been fully met. She says she saw no alternative to home education meanwhile. The school still was named in P's EHCP. The Council had a responsibility for making sure P's special educational needs were met. P had an e-learning package for the last three weeks of the summer term. Mrs M says it was not suitable for his needs.

24. I do not find fault by the Council in its response to the concerns about the lack of provision. It raised the matter with the school. The early annual review provided an opportunity to consider how best to meet P's needs. But Mrs M had to complain about P's provision. She then was drawn unnecessarily into a discussion about funding. The written record of the review meeting is limited. In the absence of any other evidence I accept that Mrs M took on home education for P reluctantly. There was fault by the Council in not meeting its responsibility to make sure P's special educational needs were met during the second half of the summer term 2016.

25. I understand the Council is reviewing the funding of special educational needs through the cluster system.

Recommended action

26. I recommend the Council should take the following steps to remedy Mrs M's complaint: write to her to apologise for failing to fully meet P's needs in June and July 2016; pay Mrs M £500 to recognize this and the need for her to home educate P; pay her £150 for the time, trouble and inconvenience in dealing with her complaint, and the worry caused to her by involving her in funding issues.

Inform the Ombudsman of progress in reviewing the funding arrangements for special educational needs.

27. There was fault by the Council in its approach to meeting P's special educational needs during the second half of the summer term 2016.

The Ombudsman recommends a remedy to acknowledge this; the difficulty caused to Mrs M in having to had to home educate P, and in dealing with her complaint.

Investigator's decision on behalf of the Ombudsman

Case Study Number two

The Ombudsman's draft decision Summary:

Mrs F was unhappy the Council failed to put in place alternative provision for her son G when he could not attend school. There is evidence of fault leading to injustice for both Mrs F and G.

The complaint

1. The complainant, whom I shall call Mrs F, claimed the Council delayed putting in place alternative provision for her son, G, when he was out of school.
2. The Council did not put the complaint through its complaints process on the basis it had written to Mrs F's GP to explain what had happened and did not feel its response would be any different to that.

What I have investigated

3. I have investigated Mrs F's complaint and also the Council's complaints handling. I have not investigated Mrs F's concerns about the school for reasons I explain at the end of the Statement.

The Ombudsman's role and powers

4. The Ombudsman investigates complaints of injustice caused by maladministration and service failure. I have used the word fault to refer to these. The Ombudsman cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. She must consider whether there was fault in the way the decision was reached. (Local Government Act 1974, section 34(3))
5. The Ombudsman cannot investigate complaints about what happens in schools. (Local Government Act 1974, Schedule 5, paragraph 5(b))
6. The law says the Ombudsman cannot normally investigate a complaint when someone can appeal to a tribunal. However, she may decide to investigate if she considers it would be unreasonable to expect the person to appeal. (Local Government Act 1974, section 26(6)(a))

How I considered this complaint

7. I considered the information Mrs F sent in with her complaint. I also made enquiries of the Council and analysed its response. I referred to the Council's guidance for schools on making referrals for medical needs from June 2015 and at the relevant statutory guidance 'Ensuring a good education for children who cannot attend school because of health needs' from January 2013. We would expect Councils to adhere to statutory guidance unless they had very good reasons not to do so. I have sent Mrs F and the Council a copy of this draft decision and will take their comments into account before issuing my decision.

What I found Background

8. G has a diagnosis of autism (from February 2016) and anxiety stemming from that condition. From September to November 2015, G's school attendance dropped to 40 percent because of anxiety. From December 2015 he was signed off sick because of medical reasons and did not attend at all. Mrs G notified the Council of the problems in

November but she complained it did not put in place alternative provision and the school failed to put in place reasonable adjustments that might have helped G attend more often.

Education provision

What should have happened

9. The statutory guidance is clear that councils should take steps to identify whether alternative provision is required when a child is missing school because of illness or other medical needs unless it is satisfied suitable provision is being made. It says (at paragraph 14) councils 'should be ready to take responsibility for any child whose illness will prevent them from attending school for 15 or more school days, either in one absence or over the course of a school year, and where suitable education is not otherwise being arranged'. Such arrangements are triggered by medical evidence, which should come from a consultant or from a GP if a consultant's appointment is awaited.

10. Once the Council received information of a child missing school for these reasons, and had the required evidence, I would expect arrangements made 'as quickly as possible' to ensure G was accessing education. Although the Council's guidance puts the onus on schools to refer children on to the medical service, the Council has a statutory responsibility to ensure children don't lose out on education they might otherwise have benefitted from. So that it can do this effectively, it would need to work with medical personnel and the family.

What did happen?

11. One of the Council's senior staff was aware of the problems Mrs F was having with G and his school attendance from contact with Mrs F's MP on 5 October 2015. Although G was not off school, at that point, for 15 consecutive days (and he was not signed off); given his attendance was dropping, it would seem appropriate for the Council to start to make enquiries with the school.

12. Although the Council might have intervened to make this happen earlier, the school held a meeting on 20 October to discuss the situation with Mrs F and the Council. It noted it had received no medical information from G's GP. The school wrote to Mrs F the following day asking for permission to contact the GP. An officer from the short stay school had assessed G and set up a group but G refused to engage. Given Mrs F was hopeful G might re-engage, and he was not formally signed off at this point, I do not find the Council at fault for not putting in alternative provision at that stage.

13. The Council chased the school for additional information in November. There is no evidence the school informed it of further problems with G. On that basis the Council did not have grounds to put alternative provision in place.

14. By December, Mrs F says G was no longer attending although she has provided me with no evidence she sent appropriate doctors certificates to the Council for it to put in place alternative provision. On 2 February the school told the Council G 'is currently signed off from attending school for 2 months'. It said it was 'sending work home' but it did not say G had access to any teaching. At that point, the Council should have considered whether its duty to provide education kicked in. I would have expected the Council to consider its position with a view of putting in alternative provision by the beginning of March. Instead, G did not receive alternative provision until 29 April. This delay of two months is fault causing G missed opportunity for education and the Council should pay G £200 for this (which reflects that G could not have had full time education at that point as the medical advice is currently for him to receive six hours of education per week).

Complaints process

15. The Council did not put Mrs F's complaints through its process because it thought its answer would be similar to that it sent to her MP. I disagree. Mrs F was entitled to raise a complaint and it should have been considered in line with the Council's corporate complaints procedures. The Council's failure to do this is fault and it caused Mrs F distress as she felt the Council was not listening to her concerns. The Council should pay her £100 for this.

Recommended action

16. For the Council to pay G £200 for the delay in putting in place alternative provision and Mrs F £100 for her distress at the Council's failure to address her complaint.

Draft Decision

17. Evidence of fault leading to injustice. A remedy has been recommended.

Parts of the complaint that I did not investigate

18. The Ombudsman cannot investigate complaints about schools. Mrs F believes the school failed to put in place reasonable adjustments for G. She says this would have enabled him to attend and reduced his stress levels. This is not something the Ombudsman could consider. Claims of disability discrimination in schools are heard by the first-tier (SEND) tribunal.

Investigator's draft decision on behalf of the Ombudsman

Suffolk Complaints

As there are many crossovers between Suffolk and Norfolk, I have included some of the basic means of complaining to relevant statutory bodies. I have not included an overview of Education, but will explain the educational complaints process for Suffolk.

- ★ **Norfolk and Suffolk Mental Health Trust** – this would cover the Silverwood Child and Family Centre.

Patient Safety and Complaints
Kingfisher House
Hellesdon Hospital
Drayton High Road
Norwich NR6 5BE
Telephone: 01603 421486
Email: complaints@nsft.nhs.uk

- ★ **Newberry Clinic – James Paget Hospital**

If you have any concerns about your treatment, or any aspect of our service, the ward or department manager, matron or doctor will be happy to help. They will always try to address your concerns straight away.

If they are unable to resolve any issues, you may wish to contact the PALS Team who will work with you to find a solution to any ongoing problems you are experiencing.

If you have not been able to resolve your issue on the ward or with our PALS team you may wish to contact our Complaints Department. If you are making a formal complaint this should be in writing (letter or email) and outline any concerns you want us to address with as much detail as possible. Please include a contact number or email address so that the Complaints Team can contact you to discuss your complaint.

To make a complaint on behalf of a relative or friend, please ensure you have the written consent of the person involved.

Complaints - Please telephone 01493 453240 or email complaints@jpaget.nhs.uk

Write to us –
PALS & Complaints Team,
James Paget University Hospitals Foundation Trust,
Lowestoft Road,
Gorleston,
Great Yarmouth,
Norfolk.
NR31 6LA

[http://www.jpaget.nhs.uk/patients-visitors/patient-advice-liaison-service-\(pals\)-and-complaints/](http://www.jpaget.nhs.uk/patients-visitors/patient-advice-liaison-service-(pals)-and-complaints/)

★ **Suffolk County Council Local Authority – Social Care Complaints/SEN complaints**

Write to

Sue Cook
Corporate Director for Children and Adult Services

And/or

Allan Cadzow
Service Director for Children and Young People’s Services

Suffolk County Council
Endeavour House
8 Russell Road
Ipswich
IP1 2BX

For Education/SEN related to Suffolk County Council see pages 10-17 above but where the below is concerned you need to write to Suffolk County Council not Norfolk – see highlighted

<p>LA not carrying out SEN responsibilities</p>	<p>LA internal complaints procedure</p> <p>Write a letter to:</p> <p>Sue Cook Corporate Director for Children and Adult Services</p> <p>Suffolk County Council Endeavour House 8 Russell Road Ipswich IP1 2BX</p>	<p>(1) Information Commissioner (2) Ombudsman (3) Secretary of State for Education</p>	<p>To the High Court to judicially review a public body</p> <p>To the High Court to claim educational negligence</p>
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SEN Home to School/Post 16 education transport

Home to school transport should adhere to:

- Statutory Government Guidance's:
- Home to school travel and transport guidance and Post-16 transport to education and training.
- The 1996 Education Act – Particularly sections 508 and 509
- The Apprenticeships, Skills, Children and Learning Act 2009 – Sections 53-57.

Common Reasons LA's Refuse Transport Assistance

- "Your child lives within the statutory walking distance."
- "You have a Motability car or receive DLA for a child or young adult and this should be used for home to school transport."
- "SEN transport can only be provided for children and young adults with a Statement of Special Educational Needs or an Education Health and Care Plan."
- "Local Authorities have no duty to provide SEN transport for Post 16 education."
- "The Local Authority will only provide transport to the nearest suitable college."
- "You have moved house and the school is now not the nearest suitable school."

Appealing LA home to School Transport Hints and Tips

- Be as clear as you can for the reasons of your appeal.
- Provide evidence from current legislation and statutory Government guidance to support your appeal.
- If possible provide medical evidence for the need for transport assistance, such as letters of support from a GP, paediatrician's reports, or sections from Education Health and Care Plans or Statement of Special Educational Needs.
- Keep any records of any contact and conversations with Local Authorities regarding your transport situation. If you have a phone conversation take the name of the officer, you are speaking to. It is also worth asking them to confirm what you have spoken about in an email so you have a record for evidence in future appeals if required.
- Be persistent.
- Always be as calm as possible and try not to lose your temper!

How Sentas Can Help

- Sentas can help by providing you with advice and information regarding SEN home to school transport.
- We can write appeal letters to the LA
- We are especially keen on supporting parents with the process of appealing to LGO.
- Putting pressure on LA's to change their policies

Contact Us

Website: www.sentas.co.uk

Email: info@sentas.co.uk

Call or text: 07986768085



Keep in touch

Find out more about how we can help you and your family, and how you can get involved with our work. Just fill in this form and post it back to us



Title
First Name
Surname
Address (line 1)
Address (line 2)
Address (line 3)
Town
Postcode
Telephone number
Mobile number
Email address

ASD Helping Hands would like to keep you informed about our services, upcoming news, events and fundraising activities. We will look after your data as set out in our privacy and data protection policy.

If you prefer not to receive information by post, please tick this box

If you prefer not to receive information by telephone, please tick this box

We'd like to keep in touch by email, if you are happy with this, please write your email address in the space provided above

What is the date of birth of the person you are contacting us about?

□□ / □□ / □□

Please return this form to:

Room 219 Breckland Business Centre
St Withburga Lane
Dereham
Norfolk
NR19 1FD

We would like to tailor our communication with you to ensure they are relevant to your interests.

What is your connection with autism?
(Please tick all that apply)

I am autistic

I am the parent/carer of someone on the Autistic Spectrum

Someone in my family is diagnosed with autism

I know someone who's autistic

I am a professional working in the field of autism

I have another connection with autism
Please Specify _____

I have no connection with Autism

“ASD Helping Hands will support all service users affected by an Autistic Spectrum Disorder (ASD) regardless of age or what stage of life they are at. We aim to offer guidance, practical advice and support whether you are personally affected or you are an associated family member, carer, friend or professional. We will actively champion the rights of all people affected by ASD’s and aim to make a positive difference to their lives while delivering a service that is accessible, reliable and trustworthy.”

The organisation is for all affected by the Autistic Spectrum, this covers a wide variety of difficulties. We believe that all families and individuals have the right to good quality information, support and guidance in order to promote empowerment to allow positive choices to be made, enabling access to the same opportunities as everybody.

Currently working across Norfolk and Suffolk

ASD Helping Hands

219 Breckland Business Centre
St Withburga Lane
Dereham
Norfolk
NR19 1FD

Autism Helpline: 01362 853018
Email: asdhelplinghands@gmail.com
Website: www.asdhelplinghands.org.uk

ASD Helping Hands is a voluntary organisation and relies on voluntary income to support its work, including the development of resources like this one for parents and carers

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