



TORBAY COUNCIL CHILDREN'S SERVICES

MODEL GUIDANCE AND PROCEDURE FOR DEALING WITH SCHOOL COMPLAINTS

St Marychurch C of E (VA) Primary and Nursery School

Adopted by the Full Governing Body 5th July 2010

Revised March 2010

Amendments

1. Section 2 (page 4) and pages 16 and 19 have been revised to include details of the Secretary of State for Children, Schools and Families power to intervene under section 496 or 497 of the Education Act 1996 and the introduction of a new complaints service which will enable the Local Government Ombudsman to consider complaints about school issues.

2. The addition of a footnote (page 15) to indicate that recourse through the Torbay Council School Complaints Panel will cease upon the introduction of new complaints service which enables the Local Government Ombudsman to consider complaints about acts of omissions of a governing body.

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PROCEDURE FOR DEALING WITH SCHOOL COMPLAINTS

This procedure was adopted by the Governing Body of **St Marychurch C of E (VA) Primary and Nursery School** at its meeting on **5th July 2010**

The Governing Body has

1. adopted the procedures outlined for Stages 1 and 2 on **5th July 2010**
2. adopted the recommended conduct of complaints and appeal committees (annex 3) on **5th July 2010**
3. agreed that the complaints committee and the appeal committee will normally comprise **3** governors
4. agreed that any complaint about the Governing Body or the Governing Body and the Headteacher will be considered by the Torbay School Complaints Panel and that the decision of this panel will be accepted and implemented
5. agreed policies for dealing with unreasonably persistent complainants and unacceptable behaviour on **5th July 2010**

NOTE: This page should be amended at the points marked << >> to reflect the decisions made by the governing body.

1. General Guidance

Every school values its relationship with parents, carers and the local community. School staff are happy to receive suggestions and comments on what goes on within a school, and this can help to identify areas of success and where improvements can be made.

Individuals will also, however, want to raise concerns and it is important that anyone who does so is treated seriously and fairly. It is in everyone's interest that complaints are resolved at the earliest possible stage. Every effort should be made to resolve the matter informally. Many enquiries and concerns can be dealt with by a teacher, the headteacher or other members of staff, without needing to resort to a formal procedure.

If it is not possible to resolve the matter informally the person raising the concern may decide to pursue a formal complaint.

2. Legal requirements

Every governing body is required by Part 3, Chapter 1, Section 29 of the Education Act 2002 to set up a procedure for dealing with complaints. The school's complaints procedure is for parents, carers, pupils and members of the public to use to make complaints about members of the school staff and the governing body. In circumstances that fall outside the scope of the staff grievance procedure, the school complaints procedure may also be used by school staff.

A complainant who believes that the governing body has acted 'unreasonably' may approach the Secretary of State for Children, Schools and Families, under section 496 or 497 of the Education Act 1996, and ask him/her to consider their complaint. For the Secretary of State to intervene the governing body has to be acting unreasonably or unlawfully and it must be expedient to intervene. In practice there are few occasions where the Secretary of State may issue a direction where the head teacher or school has failed in its statutory duty. From September 2011 the Secretary of State's role will be replaced by a new schools complaints service delivered by the Local Government Ombudsman.

This model procedure is based upon "School Complaints Procedure" guidance issued by the DfES (LEA/0180/2003).

In discharging their duties, those dealing with complaints must observe the requirements of the Human Rights Act 1998, the Data Protection Act 1998 and other relevant rights based legislation and conventions.

3. What is a complaint?

For the purposes of this procedure, the definition of a complaint is 'any expression of dissatisfaction that needs a response.'

4. Dealing with complaints

The formal procedure will be used when initial attempts to resolve the issue are unsuccessful and the person raising the concern remains dissatisfied and wishes to take the matter further. This procedure provides a staged process to ensure that all complaints are dealt with fairly and effectively. It is clearly stated at each stage who is responsible for what actions and the recommended timescale. It is important that a formal complaint is dealt with correctly. Depending on who is the subject of the complaint, the complaint will be dealt with by different individuals or a committee. This upholds the rights of both the complainant and the person or persons complained against. The aim is to try and resolve matters fairly and promptly. The formal procedure must be followed, but common sense and interpersonal skills should be used to try and resolve the matter.

The standard of proof applied when dealing with complaints should be the civil standard of "balance of probabilities" and not the criminal standard of "beyond reasonable doubt."

5. Time limit for making a complaint

It is often difficult or impossible to investigate, in a full and fair manner, complaints which involve issues that happened more than a year ago. For this reason, schools should not normally consider complaints made more than one year after the date of the event which gave rise to the complaint or the date the complainant became aware of it.

However, schools should positively receive requests for the matter to be considered out of time if it can be demonstrated that there:

- are genuine reasons for the complaint not being made within one year,
- if there is sufficient access to information/individuals involved to enable an effective and fair investigation
- it is considered that there is a real benefit to the complainant in proceeding

Where it is decided that a complaint will not be considered, the complainant will be informed in writing of the reasons for this decision. The complainant has the right to approach the Secretary of State for Children Schools and Families.

6. Receiving a complaint

When someone raises an issue with a member of staff, a governor or the clerk to the governing body, it is essential that whoever is first contacted is aware of the procedure so that they know what to do when they receive a complaint. The individual should also be advised appropriately about how to proceed and be given a copy of the school's complaints procedure. Complaints will ONLY be considered through the stated procedure and any complaint must start at Stage 1.

When a person makes a complaint (from this point referred to as the complainant), they may do so in writing or verbally. To help in dealing with the complaint, it is important that some details about the complaint and the person raising it are recorded. A recording form is given in Annex 1. At this point, clarification should be sought that the individual wants to pursue a complaint: the receipt of a written comment may not mean that a formal complaint has been made; a verbal comment may be the start of a formal complaint.

Where a complaint is made verbally it is important that it is recorded in writing and the record agreed with the complainant. Ideally this agreement will be in writing. The timescale for responding to the complaint does not start until the complaint is agreed with the complainant.

7. Anonymous complaints

Anonymous complaints fall outside the scope of this procedure. Such complaints will be referred to the headteacher (or in the case of an anonymous complaint about the headteacher, the chair of governors) who will decide what action, if any, will be taken.

8. Support for complainants

If the person making a complaint needs support in order to raise a concern or complaint, every effort should be made to ensure this is available to enable them to fully participate in the process. This may include providing help with writing, providing a translation of the procedure and any other paperwork in a language other than English or providing documents in alternative formats such as on a tape cassette, in Braille or large print. Provision of interpreters in various languages, including British Sign Language, should be considered when necessary.

9. The role of all governors

Once the school procedure has been adopted, it is important that all governors and the clerk to the governing body become familiar with the stages in the procedure. Individual governors or staff approached by someone with a concern or complaint should ensure that the complainant is referred to the appropriate stage of the procedure and the relevant person. Governors must not act unilaterally on an individual complaint outside the formal procedure and should try to avoid becoming involved at the

early stages in case they are needed to sit on a committee at a later stage of the procedure. The day to day running of the school is the headteacher's responsibility, so all concerns about this should be referred to the headteacher.

10. Resolving complaints

At each stage in the procedure, ways in which a complaint can be resolved should be kept under consideration and it would be useful if complainants were encouraged to state what actions they feel might resolve the problem. This will support the identification of areas of agreement between the parties. It is equally important to clarify any misunderstandings that might have occurred as this can create a positive atmosphere in which to discuss any outstanding issues.

It might be sufficient to acknowledge that the complaint is valid in whole or in part. In addition, it may be appropriate to offer one or more of the following

- an apology
- an explanation
- an admission that the situation could have been handled differently or better
- an assurance that the event complained of will not recur and an explanation of the steps that have been taken to ensure that it will not happen again
- an undertaking to review school policy/policies in light of the complaint.

An admission that the school could have handled the situation better is not the same as an admission of negligence.

11. Time limits for dealing with a complaint

Complaints need to be considered and resolved as quickly and efficiently as possible. This procedure includes realistic time limits for each action within each stage. However, where further investigations are necessary, new time limits can be set but the complainant must be informed of the new deadline and given an explanation for the delay.

12. Investigating complaints

The person conducting an investigation into a complaint should

- establish what has happened so far, and who has been involved
- clarify the nature of the complaint and what remains unresolved
- offer the complainant an opportunity to meet or to have a conversation about any aspects of the complaint that need clarification
- clarify what the complainant feels would put things right
- interview those involved in the matter and/or those complained of, allowing them to be accompanied if they wish
- conduct any interview with an open mind and be prepared to persist in the questioning
- keep notes of any interview

See Annex 4 for a good practice guide.

13. Record keeping and monitoring

Records should be kept of all concerns and complaints. Whenever the formal complaints procedure is used, all records relating to the complaint should be retained securely at the school. Any member of staff who is the subject of a complaint must be given access to, and be allowed to comment on, any documents relating to the complaint. All such written notes must be kept alongside the originals.

The governing body should monitor the level and nature of complaints and review the outcomes on a regular basis to ensure the effectiveness of the procedure and make changes where necessary. It is recommended that the headteacher reports, at least annually, to the governing body the number and type of complaints received and the number resolved at each stage of the procedure. This information should not name individuals.

A member of staff may be nominated to have responsibility for the operation and management of the school complaints procedure. It is recommended that the school's 'complaints co-ordinator' is the headteacher or a member of the senior management team.

As well as addressing an individual's complaint, the process of listening to and resolving complaints will contribute to school improvement. When individual complaints are heard, underlying issues that need to be addressed can be identified. The monitoring and review of complaints by school staff and the governing body can be a useful tool in evaluating a school's performance.

14. Appointing governors to complaints and appeals committees

To enable prompt consideration of any complaint, governing bodies should ensure that named governors are appointed to both the complaints (it is recommended that this role is part of a "first" committee function) and appeals committees, and vacancies are filled promptly. A clerk who is familiar with the procedure should be appointed.

It is recommended that the membership of complaints and appeal committees is reviewed and agreed when the governing body decides the membership of its committees. In deciding the make-up of the committees, the governing body should try and ensure that it is a cross section of the categories of governor and sensitive to the issues of race, gender and religious affiliation. There may be circumstances where it may not be appropriate for staff governors to be involved.

It is recommended that the complaints and appeal committees each comprise of at least three named governors. To avoid delay in setting up the committees, the governing body may wish to appoint larger groups of named governors from which these committees can be drawn. No governor involved at Stage 1 of a complaint may be a member of the appeal committee. It is essential that all governors who are likely to be involved in either committee receive training and are familiar with the procedure.

15. Roles and responsibilities of members of complaints and appeal committees

The key role of the chair of the complaints or appeal committee is to ensure that:

- the remit of the committee is explained to the parties and each party has the opportunity of putting their case without undue interruption
- the issues are addressed
- key findings of fact are made (this may not always be possible where the issue relates to opinion)
- parents and others who may not be used to speaking at such a hearing are put at ease
- the hearing is conducted in a friendly professional manner with each party treating the other with respect and courtesy
- the committee is open minded and acting independently
- the committee is scrupulously fair in the way it treats the complainant and the headteacher. It can be very easy to give the appearance of bias in favour of one party or the other in the way individuals behave.
- each side is given the opportunity to state their case and ask questions
- written material is seen by all parties. If a new issue arises it would be useful to give all parties the opportunity to consider and comment on it.
- no member of the panel has a vested interest in the outcome of the proceedings or any involvement in an earlier stage of the procedure

Governors sitting on complaints or appeal committees need to be aware of the complaints procedure and remember that:

- it is important that any hearing is independent and impartial and is seen to be so. No governor (or in the case of an independent panel, individual) may sit on a complaints or appeal committee if they have had prior involvement in the complaint or in the circumstances surrounding it.
- the aim of any hearing, which needs to be held in private, should always be to seek to resolve the complaint and achieve reconciliation between the school and the complainant. However, it has to be recognised that the complainant might not be satisfied with the outcome particularly if the hearing does not find in their favour. It may only be possible to address all the points at issue and make recommendations which will satisfy the complainant that her/his complaint has been taken seriously.

- an effective committee will acknowledge that many complainants feel nervous and inhibited in a formal setting. Parents often feel emotional when discussing an issue that affects their child. The chair of the committee should ensure that the proceedings are as welcoming as possible. The layout of the room will set the tone, and care is needed to ensure that the setting is informal and non adversarial.
- confidentiality must be maintained
- extra care needs to be taken when the complainant is a child. Careful consideration of the atmosphere and proceedings will ensure that the child does not feel intimidated. The committee needs to be aware of the views of the child and give them equal consideration to those of adults. Where the child's parent is the complainant, it would be helpful to give the parent the opportunity to say which parts of the hearing, if any, the child needs to attend.

Members of complaints or appeal committees are expected to:

- prepare thoroughly by ensuring that they have read papers in advance of the meeting
- attend for the entirety of the hearing and contribute to the consideration of the complaint through the chair
- listen, observe and question carefully. Questions should, if possible, be open to allow the respondent to express their feelings.
- support the chair by taking an active part in the decision process
- contribute to deliberations and the wording of the committee's findings
- provide relevant opinion based on any specialist skills, knowledge and awareness that they have in respect of the presenting complaint

The clerk(s) to the complaints and appeals committee will be the point of contact for the complainant and will be responsible for:

- setting the date, time and venue of the hearing, ensuring that the dates are convenient to all parties and that the venue and proceedings are accessible
- collating any written material and sending it to all parties at least three working days before the meeting
- meeting and welcoming the parties as they arrive at the hearing
- recording the proceedings
- notifying all parties of the Committee's decision

16. The remit of complaints and appeal committees

The committees can:

- find that the complaint/appeal is valid in whole or in part
- find that the complaint/appeal is not valid in whole or in part
- decide on the appropriate action to be taken to resolve the complaint
- recommend changes to the school's systems or procedures to ensure that problems of a similar nature do not recur

17. Publicising the Complaints Procedure

There is a legal requirement for the procedure to be publicised. It is up to the governing body to decide how to fulfil this requirement but details of the school's procedure should be easily accessible. They could be included in:

- the school prospectus
- information given to new parents when their children join the school
- information given to the children themselves
- the home-school agreement
- home school bulletins or newsletters
- documents supplied to community users including course information or lettings agreements
- a specific complaints leaflet which includes a form on which a complaint can be made
- posters displayed in areas of the school that will be used by the public, such as reception or the main entrance
- the school website

Arrangements should be in place for the procedure to be made available in alternative formats or in other languages for complainants whose first language is not English.

18. Vexatious complaints

If properly followed, the complaints procedure will limit the number of complaints that become protracted. However, there will be occasions when, despite all stages of the procedures having been followed, the complainant remains dissatisfied. If the complainant tries to reopen the same issue, the chair of governors is able to inform the person in writing that the procedure has been exhausted and that the matter is now closed.

Further guidance on dealing with unreasonably persistent complainants or complainants whose behaviour is unacceptable is available in Annexes 5 and 6 and from the Children's Services Complaints Manager.

19. Complaints not covered by this procedure

The school complaints procedure does not apply:

- when the same or a similar complaint has been made and dealt with at all stages of the procedure
- anonymous complaints
- to complaints deemed to be out of time
- where a complaint relates to matters which should be dealt with under a different procedure or arrangement

It is possible that during the operation of the school complaints procedure, information becomes available which indicates that the matter must be dealt with under a different procedure. If this happens, the complainant should be informed and given reasons for the change. They should also be kept up to date with any developments, although it may be inappropriate for details of the outcome of any investigation to be passed on.

In order to uphold correct procedures in cases where there could be safeguarding or staff discipline issues it is essential that whoever first receives any concern or complaint should, before discussing the matter with anyone else, consider whether there are safeguarding or staff discipline issues.

If there are any issues relating to **Safeguarding children and young people**, the person receiving the complaint must not discuss the matter with anyone until advice has been sought from the LA designated officer, currently the Operations Manager, Safeguarding Unit (telephone 01803 208411).

If there are issues directly relating to **staff discipline**, the matter will be dealt with under the school's staff disciplinary procedure. The complainant will be informed that the issue is being dealt with but will not be given any details. Advice should be sought from a Human Resources Adviser.

The school complaints procedure **does not** cover complaints about the following

| | FOR MORE INFORMATION | |
|--|--|---|
| adult and community learning | contact the Adult and Community Learning Coordinator | 01803 409208 |
| youth service provision | contact the Principal Youth Officer | 01803 208275 |
| the curriculum; collective worship or R.E. | follow separate procedure | 01803 208224 |
| exclusion of pupils, | follow separate school procedure | |
| school admissions | contact Admissions & Student Services | 01803 208908 |
| school transport | contact Transport, Policy & Planning | 01803 208240 |
| staff disciplinary and grievance matters | follow separate school procedure | 01803 207345 |
| special educational needs (SEN) or | follow separate school procedure | |
| appeals to SEN tribunals | contact SEN Section | 01803 208274 |
| disapplication of the National Curriculum | follow Council procedure | 01803 208224 |
| Children's social care | follow separate procedure | 01803 208410 |
| Torbay Council | contact Connections | Brixham 01803 859782 Paignton 01803 665868 |

20. Freedom of Information

Complaints regarding non-compliance with a school's or college's Freedom of Information publication scheme obligations should initially be made using the school complaints procedure. For these complaints, there is only one stage at the school level, which will be heard by the governing body complaints committee. Where the matter fails to be resolved at this stage, a complaint may be made to the Information Commissioner's Office. The Information Commissioner can look into the matter if it appears the school is not complying with its duties under the Act, and has discretionary powers to enforce the adoption of a scheme, or the disclosure of information which falls within the classes of a publication scheme if he is satisfied that the school is not complying with its duties under the Act.

A summary of where complaints against different individuals or groups should be sent to is given on the next page.

A flow chart of the various stages in the procedure is given in Annex 2.

21. Where should complaints be sent?

It is important that complaints are sent to the correct contact person. If a complaint is sent to the wrong person, it is essential it is redirected promptly to ensure that the correct procedure is followed.

This is particularly important for chairs of governors who may be sent a complaint about a member of staff when it should initially be dealt with by the headteacher. In these circumstances, it would be advisable that the chair writes a letter to acknowledge that s/he has received the complaint, but explains that the procedure states that a Stage 1 complaint is dealt with by the headteacher. The chair must not attempt to investigate the complaint or take it to the governing body or a committee, even if that is what the complainant has requested or expects.

| | | |
|---|---|---|
| STAGE 1 | | |
| ABOUT A MEMBER OF STAFF | → | the headteacher at the school |
| ABOUT THE HEADTEACHER | → | the clerk to the governing body for the attention of the chair of the governing body complaints committee c/o the school |
| ABOUT THE GOVERNING BODY OR ABOUT THE GOVERNING BODY AND THE HEADTEACHER | → | Strategic Director Children, Children's Services, Oldway, Torquay Road, Paignton TQ3 2TE Telephone: 01803 208224 |
| ABOUT NON-COMPLIANCE WITH THE SCHOOL'S FREEDOM OF INFORMATION PUBLICATION SCHEME | → | the clerk to the governing body for the attention of the chair of the governing body complaints committee c/o the school |
| STAGE 2 | | |
| ABOUT THE WAY THE HEADTEACHER DEALT WITH A STAGE 1 COMPLAINT AGAINST A MEMBER OF STAFF | → | the clerk to the governing body for the attention of the chair of the governing body complaints appeal committee c/o the school |
| ABOUT THE WAY THE GOVERNING BODY COMPLAINTS COMMITTEE DEALT WITH A STAGE 1 COMPLAINT ABOUT THE HEADTEACHER | → | the chair of the governing body complaints appeal committee c/o the school |
| COMPLAINTS THAT ARE UNRESOLVED AT THE END OF THE PROCEDURE CAN BE REFERRED TO | → | Department for Children, Schools & Families Castle View House, East Lane Runcorn, Cheshire WA7 2GJ Telephone: 0870 000 2288 Online at http://www.dcsf.gov.uk/contactforms/contactus/schools.cfm |
| COMPLAINTS ABOUT NON-COMPLIANCE WITH THE SCHOOL'S OR COLLEGE'S FREEDOM OF INFORMATION PUBLICATION SCHEME | → | The Information Commissioner, FOI Compliance Team (complaints), Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF |

Advice about the complaints procedure can be obtained from:
The Complaints Manager and/or the Information Governance Officer
Telephone: 01803 207413 or 208224
Email: CSComplaints@Torbay.gov.uk

Note: references to complaints and or complaints appeal committee should be customised to reflect the governing body's arrangements. For example where complaints are part of a "first" committee's function.

STAGE 1 COMPLAINT ABOUT

A member of staff

WHO SHOULD THE COMPLAINT BE SENT TO?

The Headteacher/School Complaints
Co-ordinator

WHO WILL DEAL WITH THE COMPLAINT?

The Headteacher/School Complaints
Co-ordinator

WHAT WILL HAPPEN NEXT?

Within 5 working days of a complaint being received, and where necessary agreed, **the headteacher¹** will reply to the complainant in a letter and include a copy of the school's complaints procedure. The letter will

- confirm that the complaint is now at Stage 1 of the complaints procedure
- indicate a target date for providing a response (normally within 10 working days, but if not, an explanation for the delay and a revised date will be stated)
- invite the complainant to provide or discuss any supplementary information and to state what actions s/he feels might resolve the problem
***NOTE** This is **not** an opportunity for the complainant to add to the existing complaint or for new complaints to be made*
- state that the complainant may be accompanied at any meeting by someone - friend, relative, representative or advocate - who may speak on her/his behalf

Where necessary, the **headteacher¹** will arrange for the complaint to be investigated². Adequate time must be allowed for anyone being interviewed to have ample opportunity to respond (or submit any information). Records of all meetings and telephone conversations together with other relevant documentation must be kept securely. The member of staff who is the subject of a complaint must be given access to, and be allowed to comment on, any documents relating to the complaint.

The **headteacher¹** will decide whether the complaint is valid and will respond in writing detailing this decision which will include: a full explanation of the decision; any action taken or proposed and any request made to the member of staff complained against to take particular actions to resolve the complaint. See annex 7 for a suggested template for the response.

The response, which will normally be made **within 10 working days**, must also inform the complainant that where the complaint has not been resolved they may take it to Stage 2. The complainant must request an appeal hearing by notifying the clerk to the governing body **within 10 working days** of receiving the written response to the Stage 1 complaint. When requesting an appeal hearing the complainant should explain why they are dissatisfied with the result of Stage 1 and the outcome they expect from the appeal.

The headteacher will ensure that a copy of the response is sent to the person against whom the complaint was made.

¹ The Headteacher, School Complaints Co-ordinator or designated senior member of staff

² See Annex 3 Good Practice for Investigators

STAGE 1 COMPLAINT ABOUT

**The Headteacher
or
Non-compliance with the school/college
Freedom of information Publication
Scheme**

WHO SHOULD THE COMPLAINT BE SENT TO?

The Clerk to the Governing Body for the attention of The Chair of the Governing Body Complaints Committee

WHO WILL DEAL WITH THE COMPLAINT?

The Governing Body Complaints Committee

WHAT WILL HAPPEN NEXT?

Within 5 working days of a complaint being received, and where necessary agreed, **the chair of the complaints committee** will reply to the complainant in a letter and include a copy of the school's complaints procedure and a copy of the procedure for the meeting. The letter will:

- confirm that the complaint is now at Stage 1 of the complaints procedure
 - detail arrangements for the investigation of the complaint¹
 - invite the complainant to a meeting of the complaints committee. The date of the meeting should normally be within 20 working days of receiving the complaint, but if this is not possible, any reasonable requests made by the complainant or the headteacher for an alternative date or time should result in an agreed alternative being set at the earliest possible time;
 - invite the complainant to provide or discuss any supplementary information and to state what actions s/he feels might resolve the problem
- NOTE** This is **not** an opportunity for the complainant to add to the existing complaint or for new complaints to be made
- state that the complainant may be accompanied at any meeting by someone – friend, relative, representative or advocate – who may speak on her/his behalf

The **chair of the complaints committee** will arrange for the complaint to be investigated². Adequate time must be allowed for anyone being interviewed to have ample opportunity to respond (or submit any information). Records of all meetings and telephone conversations together with other relevant documentation must be kept securely. The headteacher must be given access to, and be allowed to comment on, any documents relating to the complaint.

To support a fair process, it is important at the outset for the clerk to check the membership of the complaints and appeal committees to ensure that any governor serving has not been involved at an earlier stage of the case.

A meeting of the **complaints committee** will be convened, to which the complainant (her/his representative), the person/persons who carried out the investigation into the complaint and the headteacher will be invited. The headteacher may bring a representative to the meeting.

See Annex 3 for details of the recommended conduct of complaints and appeal committee meetings.

The role of the complaints committee is to:

- consider the investigation into the complaint
- ensure that the complainant is given an opportunity to describe the complaint
- ensure that the headteacher is given a chance to explain her/his actions and response to the complaint
- decide whether or not the complaint is valid

Having made a decision, the complaints committee will draw up a written response detailing the decision, any action taken or proposed and any request made to the headteacher to take particular action(s) to resolve the complaint. See annex 7 for a suggested template for the response.

¹ See Annex 3 Good Practice for Investigators

The response, which will normally be made **within 5 working days of the meeting**, must also inform the complainant that where the complaint has not been resolved they may take it to Stage 2. The complainant must request an appeal hearing by notifying the clerk to the governing body **within 10 working days** of receiving the written response to the Stage 1 complaint. When requesting an appeal hearing the complainant should explain why they are dissatisfied with the result of Stage 1 and the outcome they expect from the appeal.

In the case of a complaint about non-compliance with the Freedom of Information publication scheme there is no right of appeal to Stage 2 but the complainant may take the matter to Information Commissioner.

STAGE 1 COMPLAINT ABOUT

The Governing Body or the Governing Body and the Headteacher¹

WHO SHOULD THE COMPLAINT BE SENT TO?

People Commissioner and Director for Children

WHO WILL DEAL WITH THE COMPLAINT?

Torbay Council School Complaints Panel or an independent panel

It is likely that such a complaint will involve the whole governing body and so cannot be dealt with fairly and impartially within the governing body. In these circumstances, the complaint must be dealt with by an independent panel. This might be a panel of Torbay Council officers, or alternatively a governing body may choose to establish an alternative independent panel, for example members of another governing body. In taking this course of action, the governing body is agreeing to accept and implement any decision of the independent panel.

The Torbay Council School Complaints Panel can only make decisions about a Stage 1 complaint against the governing body or governing body and the headteacher. Complaints which have already been dealt with by the headteacher and/or the governing body complaints and appeal committees will not be considered. The panel will be made up of three senior officers of Torbay Council and will normally be clerked by a member of the Council staff.

WHAT WILL HAPPEN NEXT?

Within 10 working days of receiving the complaint, **the People Commissioner and Director for Children** (or her representative) will reply to the complainant in a letter and include a copy of the school's complaints procedure and a copy of the procedure for the panel. The letter will

- confirm that the complaint is now at Stage 1 of the complaints procedure
- invite the complainant to a meeting of the Torbay Council School Complaints Panel. The panel will be made up of three Torbay Council officers. The date of the meeting should normally be within 20 working days of receiving the complaint, but if this is not possible, any reasonable requests made by the complainant or those complained against for an alternative date or time should result in an agreed alternative being set at the earliest possible time.
- invite the complainant to provide or discuss any supplementary information and to state what actions s/he feels might resolve the problem

NOTE This is **not** an opportunity for the complainant to add to the existing complaint or for new complaints to be made.

- state that the complainant may be accompanied to any meeting by someone - friend, relative, representative or advocate - who may speak on her/his behalf.

Where necessary the People Commissioner and Director for Children will arrange for the complaint to be investigated. Adequate time must be allowed for anyone being interviewed to have ample opportunity to respond (or submit any information). Records of all meetings and telephone conversations together with other relevant documentation must be kept securely.

A meeting of the **school complaints panel** will be convened and the complainant, the person/persons who carried out the investigation into the complaint, members of the governing body and when the subject of a complaint, the headteacher, will be invited to the meeting. Those complained against may bring a representative to the meeting. The chair of the panel will arrange for all documents relating to the complaint to be made available to the complainant and those complained against at least three working days before the meeting.

Where a complaint is against a governing body, it will be expected that representatives, and not the whole governing body, will attend the panel meeting.

At its meeting, the panel will

- consider any investigation into the complaint

¹ From September 2011, recourse to the Torbay Council School Complaints Panel will cease upon the introduction of the new school complaints service delivered by the Local Government Ombudsman.

- ensure that the complainant is given an opportunity to describe the complaint
- ensure that the person/persons complained against are given an opportunity to explain their actions and response to the complaint
- decide whether or not the complaint is valid

The format of panel hearings will follow that detailed in Annex 3.

The panel's decision will be confirmed in writing to all parties. This will normally be **within 5 working days of the meeting** and will include a full explanation of the decision, any action taken or proposed and any request made to the person/persons complained against to take particular actions to resolve the complaint. The complainant will also be informed that there is no further right of appeal to the Council. The complainant, if they believe that the Council has acted 'unreasonably' may approach the Secretary of State for Children Schools and Families, under section 496 or 497 of the Education Act 1996, and ask him/her to consider their complaint. For the Secretary of State to intervene the Council has to be acting unreasonably or unlawfully and it must be expedient to intervene.¹

The chair of the panel will ensure that copies of the decision are sent to the complainant and the person/persons complained against.

¹ The Secretary of State's role will cease when the new school complaints service, delivered by the Local Government Ombudsman, is introduced in September 2011.

STAGE 2

This is the final stage of the school complaints procedure and provides the opportunity for the complainant to make representations to an appeal committee about the way a Stage 1 complaint was dealt with by the headteacher or the complaints committee.

This stage is not a re-hearing of the case. The role of the appeal committee is to satisfy itself that an adequate investigation took place at Stage 1, that the person complained against was given a chance to make representation and that their response was given fair consideration against the complaint being made.

Stage 2 is not available for complaints:

- against the governing body or the governing body and headteacher, as the complaint will already have been dealt with by the Torbay Council School Complaints Panel or an independent panel
- about non-compliance with the school/college Freedom of Information publication scheme

STAGE 2 COMPLAINT ABOUT

The way a Stage 1 complaint was dealt with either by the Headteacher/ Complaints Co-ordinator or the Complaints Committee

WHO SHOULD THE COMPLAINT BE SENT TO?

The Clerk to the Governing Body for the attention of The Chair of the Governing Body Complaints Appeal Committee

WHO WILL DEAL WITH THE COMPLAINT?

The Appeal Committee

WHAT WILL HAPPEN NEXT?

Within 10 working days of receiving notification that the complainant wishes to pursue the complaint, the Chair of the Appeal Committee will reply to the complainant in a letter and include a copy of the procedure for the meeting. The letter will:

- confirm that the complaint is now at Stage 2 of the complaints procedure
- invite the complainant to a meeting of the appeal committee. The date of the meeting should normally be within 10 working days of receiving notification of the appeal. If this is not possible, any reasonable request made by the complainant or the headteacher (or complaints coordinator) for an alternative date or time should result in an agreed alternative being set at the earliest possible time.
- invite the complainant to provide or discuss any supplementary information and to state what actions s/he feels might resolve the problem.
*NOTE This is **not** an opportunity for the complainant to add to the existing complaint or for new complaints to be made.*
- state that the complainant may be accompanied to any meeting by someone - friend, relative, representative or advocate - who can speak on her/his behalf.

A meeting of the **appeal committee** will be convened and the complainant and the person(s) who dealt with the complaint at Stage 1 (usually the headteacher or members of the complaints committee) will be invited to the meeting.

See Annex 3 for details of the recommended conduct of complaints and appeal committee meetings.

The role of the appeal committee is **not** to re-hear the case but to determine whether:

- an adequate investigation took place at Stage 1
- the person making the complaint was given a fair opportunity to explain their complaint
- the person/persons complained against had the chance to make representation and that their response was given fair consideration against the complaint being made

The appeal committee may decide that the appeal is:

- valid and the committee directs particular action(s) to be taken to ensure no similar complaint happens in the future.
- not valid and no further action is required;
- not valid but the committee recommends specified action(s) to be taken to ensure any future complaint is dealt with more effectively;

The clerk will record the appeal committee's decision, along with reasons for the decision. Sufficient time should be allowed for the committee to agree the wording of the statement of the decision. This will include:

- the committee's decision
- reasons for the committee's decision
- any action taken or proposed by the committee

The chair of the appeal committee may wish to inform the complainant and the headteacher or chair of the complaints committee (as appropriate) by telephone as soon as a decision has been reached. Care must be taken to ensure that both parties are given the same information over the telephone, and it is recommended that the chair read an agreed statement.

The chair of the committee is responsible for ensuring that the clerk confirms the decision in writing to the complainant and the headteacher or the chair of the complaints committee (as appropriate) within 5 working days of the committee's meeting. A covering letter will also state that there are no further stages in the complaints procedure. The complainant, if they believe that the governing body has acted 'unreasonably' may approach the Secretary of State for Children Schools and Families, under section 496 or 497 of the Education Act 1996, and ask him/her to consider their complaint. For the Secretary of State to intervene the Council has to be acting unreasonably or unlawfully and it must be expedient to intervene.¹

¹ The Secretary of State's role will cease when the new school complaints service, delivered by the Local Government Ombudsman, is introduced in September 2011.

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Complaint Recording Form

Please complete and return to _____
school contact/complaints coordinator

who will acknowledge receipt and explain what action will be taken.

Your name: _____

Pupil's name _____ Your relationship to the pupil _____
(if relevant)

Address _____

_____ Postcode _____

Daytime telephone number _____ Evening telephone number _____

Mobile phone number _____

Please give details of your complaint

What action, if any, have you already taken to try and resolve your complaint?

Who did you speak to and what was the response?

What actions do you feel might resolve the problem at this stage?

Are you attaching any paperwork? If so, please give details.

Signature:

Date:

Official use

Date acknowledgement sent:

By who:

Complaint referred to:

Date:

The person first receiving the concern must ask themselves all of the following:

Are there issues relating to Safeguarding?

Seek advice immediately from Operations Manager, Safeguarding Unit (208411)

Are there issues relating to staff discipline?

Refer to separate procedure; seek advice from HR Adviser

Are there issues relating to an area outside the scope of this procedure?

Refer to correct procedure

IF NO TO ALL

Concern is considered and dealt with (refer to procedure)

RESOLVED?

YES No further action

NO

STAGE 1
Complainant makes formal complaint

Complaint about a member of staff

Refer to Headteacher

Complaint about the Headteacher

Refer to Clerk to Governing Body Complaints Committee

Complaint about the Governing Body OR the Governing Body and the Headteacher

Refer to Torbay Council School Complaints Panel or independent panel set up by Governing Body

Complaint about the FOI scheme

Refer to Clerk to Governing Body Complaints Committee

RESOLVED?

NO

YES
No further action

RESOLVED?

NO

RESOLVED?

NO

YES
No further action

STAGE 2
Complainant wishes to pursue complaint further

Complaint about the way the Headteacher dealt with a Stage 1 complaint about a member of staff

Complaint about the way the Governing Body Complaints Committee dealt with a Stage 1 complaint about the Headteacher

Refer to Governing Body Complaints Appeal Committee

RESOLVED?

NO

YES No further action

No further stage in procedure.
Can approach the Secretary of State for Children, Schools & Families (from September 2011 the Local Government Ombudsman)

No further stage in procedure.
Can appeal to the Information Commissioner.

RECOMMENDED CONDUCT OF COMMITTEES HEARING COMPLAINTS & APPEALS

While every effort should be made to ensure that meetings are conducted in a friendly professional manner, the following procedure is intended to ensure that the complainant and the person(s) complained against has the opportunity to state their case and ask questions which are relevant to the complaint and will assist the committee's deliberation.

Members of a committee may ask questions at any point.

Where a complaint has a number of elements it is suggested that the committee consider each element separately (points 2 to 7 of the procedure).

It is recommended that after each party has spoken, the other party is given the opportunity to ask questions and raise points of information and opinion which are relevant to the complaint and will assist the committee's deliberation.

- 1 The chair of the committee will:
 - welcome and introduce all those present
 - clarify the status of all present (eg complainant, adviser, friend etc.)
 - explain the procedure for conduct of the meeting and the possible outcomes.
- 2 The chair will invite the complainant (who may be assisted by a friend, relative, representative or advocate who may speak on her/his behalf if appropriate) to describe the nature of the complaint being followed by their witnesses.

In the case of a Stage 2 appeal hearing, the complainant or their representative will be invited to explain why they were dissatisfied with the result of Stage 1 and the outcome they expect from the appeal.

- 3 The chair will invite the headteacher (and/or her/his representative) to ask questions and raise points of information and opinion which are relevant to the complaint and will assist the committee's deliberation.
- 4 The chair will invite the headteacher (and/or her/his representative) to explain the school's action. Any school witnesses will follow the headteacher.

In the case of a Stage 2 appeal hearing the headteacher and/or the chair of the complaints committee (as relevant) will explain how the decision at Stage 1 was made.

- 5 The chair will invite the complainant (and/or their representative) to ask questions and raise points of information and opinion which are relevant to the complaint and will assist the committee's deliberation.
- 6 The person who conducted any investigation into the complaint may make a statement.
- 7 The chair will invite each party to ask questions about the findings of the investigation.

Following this questioning the person who has conducted the investigation will leave the meeting.

- 8 The chair will invite the complainant to sum up her/his complaint or in the case of a Stage 2 appeal hearing the reasons why they were dissatisfied with the outcome at Stage 1.
- 9 The chair will invite the headteacher (and/or in the case of a Stage 2 appeal, the chair of the complaints committee) to sum up her/his response to the complaint.

At the conclusion of this stage, everyone except members of the committee and the person clerking the meeting will withdraw.

10 In closed session the members of the committee will deliberate on their findings and conclusions and make a decision. The standard of proof, which should be applied, is the civil standard of “balance of probabilities” and not the criminal standard of “beyond reasonable doubt.”

As this may take some time, it is suggested that the complainant and the headteacher leave the premises rather than waiting for the committee's decision.

The committee can:

- decide the complaint/appeal in whole or in part is valid
- decide the complaint/appeal in whole or in part is not valid
- decide on the appropriate action to be taken to resolve the complaint
- recommend changes to the school's systems or procedures to ensure that problems of a similar nature do not recur

The clerk should record the committee's decision together with reasons.

Sufficient time should be allowed for the committee to agree the wording of the statement of the decision. This will include:

- the committee's decision
- reasons for the committee's decision
- any future actions or changes that the committee proposes should be taken

The chair may wish to inform the complainant and the headteacher by telephone as soon as a decision has been reached. Care must be taken to ensure that both parties are given the same information over the telephone, and it is recommended that the Chair reads the agreed statement.

The chair is responsible for ensuring that within 5 working days of the committee's meeting, the clerk sends copies of the decision to all parties. The covering letter should also include information about any further action the complainant may take if s/he remains dissatisfied (see annex 7 for a possible template for a response at to a complaint which has been considered at stage 1).

GOOD PRACTICE FOR INVESTIGATORS

This following guidance is based upon Annex 2 of “Getting the Best from Complaints” published by the DfES.

The person investigating the complaint should:

- 1 establish what has happened so far, and who has been involved
- 2 refer to any existing records or documents
- 3 clarify the nature of the complaint and what remains unresolved
- 4 meet with the complainant or contact them (if unsure or further information is necessary)
- 5 clarify what the complainant feels would put things right
- 6 interview those involved in the matter and/or those complained of, allowing them to be accompanied if they wish
- 7 conduct the interview with an open mind and be prepared to persist in the questioning;
- 8 keep notes of the interview

General Points

- 9 be aware of the timescale and the importance of providing a thorough investigation
- 10 keep the person who commissioned the investigation and the complainant informed of progress
- 11 maintain strict confidentiality
- 12 consider the environment the investigations are conducted in – some places may be intimidating or distressing for children and young people in particular
- 13 adhere to relevant conventions and legislation such as Data Protection Act, Health and Safety Act and the Human Rights Act
- 14 check if there have been any previous complaints made by, or on behalf of, the person making the complaint

Getting Started

- 15 contact the complainant, ideally by phone, to offer a meeting in person. This meeting should explain the investigation procedure and:
 - (a) allow the complainant to explain how s/he feels and express any strong emotions – s/he should feel as if his complaint has been accepted
 - (b) clarify the complaint and all its individual parts and produce a written record
 - (c) ask what the complainant wants in terms of solution or outcome
 - (d) check whether the complainant needs support of any kind, in order to understand the discussion properly
 - (e) determine whether the complainant needs support during the process e.g. an advocate
- 16 read background on the complaint and any relevant legal and administrative policies and procedures
- 17 consider whether the complaint could be resolved without further investigation

Planning the Investigation

- 18 obtain all documentation needed including original versions of documents such as files, log books and timesheets
- 19 produce a chronology of the sequence of events from the files and identify the names of the individuals most directly involved in the content of the complaint
- 20 analyse and categorise the complaint into its different elements
- 21 identify any gaps or discrepancies
- 22 identify a list of interviewees and give them as much notice as possible of the intention to interview them. Supply them with relevant information on the complaint in advance of the interview.
- 23 arrange the order of interviews in a logical sequence as relevant to the particular complaint
- 24 inform all those to be interviewed that they may be accompanied by a friend or trades union representative, provided that this person is not within normal line management arrangements with the interviewee and that there are no issues of confidentiality.
- 25 consider whether a witness is needed for interviews which may be particularly difficult

26 prepare the line of questioning for each interviewee

Interviewing

- 27 explain the complaint and your role clearly to the interviewee and confirm that they understand the complaints procedure and their role in it
- 28 conduct the interviews in a friendly, professional and relaxed a manner, while ensuring that due process is adhered to:
- a. use open not leading questions;
 - b. do not express opinions in words or attitude
 - c. ask single not multiple questions, i.e. one question at a time
- 29 try to separate hearsay evidence and opinion from fact by asking interviewees how they know a particular fact
- 30 persist with questions if necessary. Do not be afraid to ask the same question twice. Make notes of each answer given.
- 31 deal with conflicting evidence by seeking corroborative evidence.
- 32 at the end of the interview, summarise the main points and ask the interviewee if they have anything to add
- 33 make a formal record of the interview from the written notes as soon as possible while the memory is fresh. Show the interviewee the formal record, ask if they have anything to add, and to sign the record as accurate.
- 34 keep the complainant informed of the progress of the investigation

The Investigation Report

- 35 the report should include:
- a. chronology
 - b. list of interviewees
 - c. the complaints set out in a numbered list
 - d. your analysis and findings for each point of complaint
 - e. a record of relevant policy, practice and legislation
 - f. your recommendations and response to the complainant's desired outcomes
 - g. any other relevant information
 - h. a separate addendum for any other issues for the school/college
- 36 a copy of the draft report should be sent to the person who commissioned the investigation, who will advise as to how this will be released

Report Writing Guidance for Investigators

Preparation

- Assemble all the notes taken during the investigating process.
- Consider the investigation brief carefully. The report should be written so that the elements of this brief follow sequentially.

Note: It is absolutely essential that reports are written clearly and accurately. Careful attention needs to be paid to the use of language – especially the use of jargon or phrases/initials which only a few people would understand.

Allow plenty of time for report writing.

Structure of the Report

All reports should include the following elements:

| | |
|------------------|---|
| The complaint | copy of the original complaint |
| The introduction | will describe the main features of the report and any relevant information with regard to the background of the investigation |

- The main body will describe the main elements of the investigation sequentially. It will contain timescales of events with regard to the investigation being reported; list of interviewees; the complaints set out in a numbered list; factual evidence; references, quotations from key personnel; record of relevant policy, practice and legislation and any other relevant information.
- The findings your analysis and findings for each element of the complaint. They will be evidenced in the content of the main body of the report.
- The recommendations your recommendations and response to the complainants desired outcomes. Any other issues should be set out in a separate addendum
- The acknowledgements will be to demonstrate the contribution made by any other people in the compilation of the report.
- All reports are to be marked 'personal and confidential'

DEALING WITH UNREASONABLY PERSISTENT COMPLAINANTS

It is important that all those dealing with complaints do so in a fair and impartial manner and provide a high quality service to complainants. As part of this service the contact complainants have with a school should not normally be limited.

However there are a small number of complainants who, because of the frequency of their contact hinder the work of the school and the consideration of their or other people's complaints. Such complainants are referred to as 'unreasonably persistent complainants' and, exceptionally, the school will need to consider taking action to limit their contact with the school.

In seeking to distinguish between a person who has a number of complaints and a person who makes unreasonably persistent complaints regard should be had as to whether:

- the same complaint is being made repeatedly (or with minor changes) and the complainant never accepts the outcomes
- the complaint arises from a historic and irreversible decision or incident
- the complainant is seeking an unrealistic outcome and persists until it is reached
- the complainant has a history of making other unreasonably persistent complaints
- contact with staff is frequent, lengthy, complicated and stressful
- the complainant behaves in an aggressive manner to staff when presenting their complaint or is verbally abusive or threatening
- the complainant changes aspects of the complaint partway through the investigation or consideration of the complaint
- the complainant makes and breaks contact on an ongoing basis
- the complainant persistently approaches the school through different routes in the hope of getting different responses

A decision to restrict access should follow a prior warning to the complainant. Normally, the headteacher following discussion with the chair of governors should take this decision. Any restrictions imposed should be appropriate and proportionate. The options schools may wish to consider include:

- requesting contact in a particular form (for example, letters only)
- requiring contact to take place with a named individual
- restricting telephone calls to specified days and times and/or
- asking the complainant to enter into an agreement about their future contacts with the school

If the complainant does not comply with the restrictions placed on their access, it is recommended that any further correspondence, which does not present significantly new matters or new information, is not normally acknowledged but kept on file.

In all cases where someone is treated as an unreasonably persistent complainant, they should be informed in writing why their behaviour falls into this category, the action being taken and the duration of the action. They should also be told how, if they disagree with the decision, they can challenge it.

It is recommended that where someone is treated as an unreasonably persistent complainant and their complaint is still being investigated six months later, the headteacher carry out a review to decide if the restrictions should continue.

New complaints from people who are treated as an unreasonably persistent complainant should be treated on their merits.

DEALING WITH UNACCEPTABLE BEHAVIOUR

While seeking to deal with all complaints fairly and impartially and to providing a high quality service schools should not expect staff to tolerate behaviour by complainants which is unacceptable, for example, behaviour which is abusive, offensive or threatening. Action must be taken to protect staff from unacceptable behaviour.

When a complainant's behaviour is unacceptable they should be told and informed of why their behaviour is considered to be unreasonable. If after being asked to change their behaviour, the unacceptable behaviour continues, action should be taken to restrict the complainant's contact with the school.

A decision to restrict access should normally be taken by the headteacher following discussion with the chair of governors. Any restrictions imposed should be appropriate and proportionate. The options schools may wish to consider include:

- requesting contact in a particular form (for example, letters only)
- requiring contact to take place with a named individual
- restricting telephone calls to specified days and times and/or
- asking the complainant to enter into an agreement about their conduct

In all cases the school should write to tell the complainant why their behaviour is considered to be unacceptable, the action being taken and the duration of the action. They should also be told how, if they disagree with the decision, they can challenge it.

Where a complainant continues to behave in a way which is unacceptable, the school should consider terminating contact with the complainant and discontinue any investigation into their complaint.

Where the behaviour is so extreme that it threatens the immediate safety and welfare of staff, the school should consider other options, for example reporting the matter to the police or taking legal action. In such cases, the school may decide to take action without giving the complainant prior warning of the action.

POSSIBLE TEMPLATE FOR A RESPONSE AT TO A COMPLAINT WHICH HAS BEEN CONSIDERED AT STAGE 1

Dear

Thank you for your *(type of contact)* received on *(insert date)* regarding *(insert subject of complaint with enough text to ensure customer knows you have full understanding)*.

Handy hints to take into account in your reply & delete after consideration

Body of letter

- Describe action taken in response to their complaint
- Make sure you have answered all points/questions they raised
- Give honest answers
- Outline any points of law or policies in plain English
- Avoid jargon
- Use shorter sentences rather than longer ones.
- Don't let your feelings get the better of you.
- Don't try to be clever
- Be clear and to the point, but don't be too blunt

Conclusions – cover

- Outcome
- Lessons learnt
- Any changes made to service
- Training needs identified and how these will be addressed
- If we made a mistake or were wrong, say sorry
- Be understanding and empathetic
- If unable to resolve to the complainants satisfaction explain why procedure/policy etc.
- Outline any other options the customer can consider;

I am sorry that we have made a mistake. To put things right, we intend to *(describe course of action)*

OR

I am sorry that I am unable to resolve the issues you have raised because*(explain why)*

Always let them know what they can do if they are still unhappy – do not presume they will be satisfied with your response

If you are not happy with this outcome and wish to take it further, please notify the Clerk to the Governing Body within the next 10 working days. Your request should explain why you are unhappy with the result of Stage 1 and the outcome you expect from an appeal. The Chair of the Appeal Committee will write to you explaining what will happen next.

Yours sincerely,