

IMPORTANT

- The information we provide on our rights4children website is for general guidance. It is not legal advice.
- If you need legal advice, please contact an independent advocate or a solicitor.
- Article 39 tries its best to make sure information is accurate and up-to-date. However, we cannot guarantee this. We'd appreciate you letting us know if you notice any errors or out-of-date information: info@article39.org.uk

Your right to complain

- + Making a complaint can help sort out problems and stop mistreatment.



You've probably heard of people making complaints – in shops, when they have bought something that doesn't work properly, or at work if they have been treated unfairly?

This part of our site is about making complaints when you live away from home – about your care and treatment; rules and decisions; and anything else important to you.

If something goes wrong we hope it will be sorted quickly. Sometimes, though, complaints are the only way to make sure things are dealt with properly.

There are many different reasons why a child or young person might make a complaint, including:

- + A decision has been made that they don't think is best for them
Example = a child or young person has to move to a different place to live but they are settled where they are.
- + A child or young person's request for help has been refused
Example = a care leaver is refused financial help to go to university.
- + A child or young person has been waiting too long to get help
Example = a child or young person who needs help with their thoughts, feelings and behaviour has been waiting for months to see a CAHMS [Child and Mental Health Service] worker.
- + A child or young person thinks they have been discriminated against
Example = a disabled child or young person is not allowed to go on a school trip to an adventure park.

- + A member of staff has mistreated a child or children
Example = a member of staff has hit or sexually assaulted a child or young person.

Making a complaint can make things better for you, and for other children and young people – especially if the complaint is about mistreatment. Stopping someone from hurting you will also protect others.

It is always a good idea to get support when making a complaint. Practical support includes help with explaining your complaint and knowing what rights you have. Emotional support is having someone on your side who listens and cares about you.

Unfortunately, organisations often take a long time to properly look at complaints and make a final decision. This is worse for children than it is for adults because time seems to go much slower the younger you are. You'll need to have what's called 'sticking power'. The more important the complaint, the greater the reason to stick with it if you can.

Complaint example

A boy's wrist was broken during restraint in a prison in Wigan, in England, in 2011. He complained to the Prisons and Probation Ombudsman. The boy's complaint was upheld. The governor of the prison was told to apologise to him for what happened. The Prisons and Probation Ombudsman also said staff in the prison should be reminded of when and how restraint can be used in line with the law. The local council was also told it should improve how it protects children in prison.

Your rights – general

Children and young people have the same right to make a complaint as adults have. There is no set age for being able to make a complaint.

In health and social care situations, you have the right to an independent advocate to help you make a complaint. We think this is an incredibly important right. The 'People and places' part of our site gives you contact details for advocates.

You must never be punished for making a complaint. This is called victimisation and it's not allowed.

If you want to make a complaint, it may be helpful for you to first get hold of the records that your council or other professionals hold about you. Please see the 'Your right to information' part of our site for how to do this.

Your right to complain is linked to a part of the United Nations Convention on the Rights of the Child, which gives you the right to be heard and taken seriously.

The Convention on the Rights of the Child is divided into 54 sections, called articles.

Article 12 says:

- + All children and young people (up to the age of 18) have the right to express your views freely about anything that affects you.
- + Children's views must be given due weight in line with your age and maturity.
- + Whenever decisions are made about you in court, or by other official places like school or social services, you have the right to be heard. This can be through you speaking or someone else speaking on your behalf – a lawyer or an independent advocate for example.

By making a complaint, you are protecting your Article 12 right to be heard – but also many other rights. A complaint about education links to your right to education; a complaint about being hurt is linked to your right to be safe; a complaint about being moved many miles away is linked to your family rights. You get the point!

Your rights – extra

This section gives you information about your extra rights in different places.

Words in “quotation marks” come from laws and legal rules. Laws and legal rules must be followed by the people who look after you.

Children's home

The person in charge of your children's home has a lot of legal rules to follow when it comes to you being listened to and your right to make a complaint. The person in charge of your home must make sure:

- + That the home's complaints procedure is available to you as soon as it's decided you'll live there, and then throughout your time in the home.
- + As soon as possible after you arrive at the home, staff explain to you how you can make a complaint if you ever need to.
- + As soon as possible after you arrive at the home, staff explain to you what advocates do, how you can get any advocate and your rights to help from an advocate. Brilliant!
- + That you get help from an advocate when you need it.
- + The complaints procedure is regularly checked to make sure it's working properly.

- + Children and young people who live in your home are asked their views whenever the complaints procedure is being checked and improved.¹

You also have the right to make a complaint about social care generally.² This might be connected to decisions about where you live, seeing your brothers and sisters or help from your social worker for example.

- + Usually your complaint should be made within a year of the thing you are complaining about. However, your local council can decide to look into complaints after a year has passed if this would be the fair thing to do³
- + If you are not already getting help from an advocate, your local council should sort this for you⁴
- + If you don't want help from a professional advocate, you may choose someone else to support you – a parent, carer, teacher or friend for example. In this situation, the council should explain the differences in help so that you can make an informed choice.⁵

There are three main ways complaints about social care services are looked into:

- **Local resolution** (known as Stage 1) – a manager will try to sort out your complaint within 10 working days (2 weeks) of receiving it. If it's complicated the council can have another 10 days).
- **Investigation** (known as Stage 2) – an independent person looks into your complaint. This should take up to 25 working days (5 weeks). **IMPORTANT:** you can ask at the very beginning for your complaint to be investigated by an independent person (go straight to Stage 2).
- **Review panel** – if you are not happy with the result of the investigation, you have the right to ask for your complaint to be looked at by a review panel. You must ask for this within 20 working days (5 weeks) of getting the result to the investigation. The panel will be three people who are separate from social services. The panel must meet within 30 days of you asking for your complaint to be looked at by a panel. You advocate can attend the panel with you or go alone to put forward your complaint. After looking into everything, the panel will make recommendations to your council. The council then has 15 working days (3 weeks) to say what it will do.⁶

Please don't let the information above put you off making a complaint, if this is what you want to do. With good support, making a complaint can really change things for the better.

If you don't think your complaint about your children's home or social care has been looked at fairly, you have the right to make a complaint to the Local Government and Social Care Ombudsman.

Hospital or other health place

Children and young people have the same right to make a complaint about their health care or treatment as adults.

The law says every hospital or other health place must have a good system for receiving, looking into and responding to complaints from patients.⁷

Usually your complaint should be made within a year of the thing you are complaining about.⁸

You have the right to help from an independent advocate.

If you don't think your complaint about your health care or treatment has been looked at fairly, you have the right to make a complaint to the Parliamentary and Health Service Ombudsman.

Immigration detention

The law says you can make a complaint in writing or orally, in your own language.

You have the right to make a complaint in confidence, without others in the centre knowing about it. This includes the right to put your complaint in a sealed envelope.

You have the right to make a complaint directly to the centre manager or to people who monitor your centre (called the Independent Monitoring Board).⁹

The manager of your detention centre must look into complaints on a daily basis.¹⁰

Staff who work in detention centres have to follow government rules. These say that you must be given information about how to make a complaint when you first arrive.

You must be given a copy of rules of the detention centre within 24 hours of arriving. This must include information about how you can make a complaint.

Information about how to make a complaint must be held around the centre, on notice boards for example. The information must be in languages that you and others understand.

If you complain about discrimination connected to your race, the centre manager must contact the special investigator for these kinds of complaints. This person is called a Race Relations Liaison Officer.

Any complaint you make should usually be sorted within 3 days. If this is not possible, you should be told what's happening within 3 days.

When you first make a complaint, your centre must tell within 24 hours that it's been received.¹¹ This is so you know it is being dealt with.

Prison

If you are in a **young offender institution** or a **secure training centre** rules written by the government say:

- + Your prison must show it has a good complaints procedure.
- + When you first arrive at the prison, you must be given information about the complaints procedure. This information must be written in a way people your age can understand.
- + Staff should also explain the complaints procedure to you (they shouldn't just hand you a leaflet or a booklet).
- + You must be able to get help from an advocate when you make a complaint.
- + Restorative justice principles must be used to sort out complaints whenever possible.
- + If your complaint is about possible abuse or mistreatment by staff, the council and the Youth Justice Board should be told.
- + Your prison must keep check on how well the complaints procedure is working – for individual children and young people, and for children and young people generally.¹²

If you live in a **young offender institution**, the law says:

- + Within 24 hours of you arriving in the prison, you should be given information about how to make a complaint.
- + In addition, you must be told how to make a complaint by the governor or an officer. This is so you know your rights and responsibilities.¹³
- + You have the right to make a complaint in writing or by telling someone face-to-face.
- + You have the right to make a complaint in confidence.
- + The governor must look into complaints on a daily basis.¹⁴

Rules written by the government also say that:

- + The governor must let your parents and professionals who work with you know how they can raise any concerns or make a complaint.¹⁵
- + The prison complaints system has two stages. Stage 1 is when the complaint is looked at within 5 or 10 working days. Stage 2 is when a person in prison appeals against the decision. This can take another 5 or 10 working days.¹⁶
- + You also have the right to make a confidential complaint direct to the person in charge of your prison.
- + Complaints should normally be made within 3 months of the thing you are complaining about.

- + You can make a complaint in your own language (information in 19 different languages is available on the prison's Intranet).
- + You should get a response to your complaint within 5 working days (1 week). However, if your complaint was about a member of staff you should hear back within 10 working days (2 weeks).
- + The response you get to your complaint should be 1) polite and as positive as possible; 2) written in a way you understand; and 3) based on accurate and up-to-date information.

If you live in a **secure training centre**, the law says:

- + You and your parents have the right to make a complaint under the centre's grievance procedure.
- + If you ask to see the manager of your centre, this request must be passed to him or her promptly.
- + The manager of your centre must hear any requests to see him or her on a daily basis.
- + If you want to see an independent person, this must be dealt with quickly too.
- + You have the right to make a complaint in confidence.¹⁷

If you are not happy with how your young offender institution or secure training centre dealt with your complaint, the Prisons and Probations Ombudsman may be able to investigate.

- + You must have already gone through your prisons complaints system.
- + It must be less than three months since you got the final result of your complaint.

You should collect any papers relevant to your complaint and write a short note telling the Prisons and Probation Ombudsman why you are not happy with how the prison dealt with your complaint. Then send the papers to:

Prisons and Probation Ombudsman
PO Box 70769
London SE1P 4XY

School

The law says the governors of your school must set up a complaints system.¹⁸

Complaints systems in school relate to how you are treated **within** the school. There are different systems for making a complaint about going to a particular school or being excluded.

The government has written rules for schools on how they should run their complaints systems. These say that complaints systems in schools should:

- + Be publicised and easy to find out about.
- + Be simple to understand and use.
- + Thorough – so they must deal with all the problems or complaints raised.
- + Not about people taking sides.
- + Allow a proper investigation by an independent person where necessary.
- + Respect people’s confidentiality if this is what they want.
- + Help people who run the school improve things for everyone.¹⁹

Schools where children live must follow standards. The standards for both boarding schools and residential schools say you should not be told off or treated badly because of making a complaint.²⁰

Secure children’s home

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- + As soon as possible after you arrive at the home, staff explain to you how you can make a complaint if you ever need to.
- + As soon as possible after you arrive at the home, staff explain to you what advocates do, how you can get any advocate and your rights to help from an advocate. Brilliant!
- + That you get help from an advocate when you need it.
- + The complaints procedure is regularly checked to see it’s working properly.
- + Children and young people who live in your home are asked their views whenever the complaints procedure is being checked and improved.²¹

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- + If you are not already getting help from an advocate, your council should sort this for you²⁴

- + If you don't want help from a professional advocate, you may choose someone else to support you – a parent, carer, teacher or friend for example. In this situation, the council should explain the differences in help so that you can make an informed choice.²⁵

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Please don't let the information above put you off making a complaint, if this is what you want to do. With good support, making a complaint can really change things for the better.

If you don't think your complaint about your secure children's home or social care has been looked at fairly, you have the right to make a complaint to the Local Government and Social Care Ombudsman.

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1 Regulation 7 The Children's Homes (England) Regulations 2015.

2 Section 26 Children Act 1989.

3 Regulation 9 The Children Act 1989 Representations Procedure (England) Regulations 2006.

4 Regulation 11 The Children Act 1989 Representations Procedure (England) Regulations 2006. See also The Advocacy Services and Representations Procedure (Children) (Amendment) Regulations 2004.

5 Department for Education (2006) Children's social care: getting the best from complaints. Statutory guidance.

6 The Children Act 1989 Representations Procedure (England) Regulations 2006.

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- 7 Regulation 16 The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.
 - 8 Regulation 12 The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009.
 - 9 Home Office (2011) Detention services operating standards manual.
 - 10 Rule 38 The Detention Centre Rules 2001.
 - 11 Home Office (2011) Detention services operating standards manual.
 - 12 Youth Justice Board (2012) Managing the behaviour of children and young people in the secure estate. Code of Practice.
 - 13 Rule 7 The Young Offender Institution Rules 2000.
 - 14 Rule 8 The Young Offender Institution Rules 2000.
 - 15 Ministry of Justice (2012) Care and management of young people. PSI 08/2012.
 - 16 National Offender Management Service (2016 update) Prisoner complaints. PSI 02/2012.
 - 17 Rule 8 The Secure Training Centre Rules 1998.
 - 18 Section 29 Education Act 2002.
 - 19 Department for Education (2016) Best practice advice for school complaints procedures 2016. Departmental advice for maintained schools, maintained nursery schools and local authorities.
 - 20 Department for Education (2015) Boarding schools. National minimum standards, standard 17; Department for Education (2015) Residential special schools. National minimum standards, standard 17.
 - 21 Regulation 7 The Children's Homes (England) Regulations 2015.
 - 22 Section 26 Children Act 1989.
 - 23 Regulation 9 The Children Act 1989 Representations Procedure (England) Regulations 2006.
 - 24 Regulation 11 The Children Act 1989 Representations Procedure (England) Regulations 2006. See also The Advocacy Services and Representations Procedure (Children) (Amendment) Regulations 2004.
 - 25 Department for Education (2006) Children's social care: getting the best from complaints. Statutory guidance.
 - 26 The Children Act 1989 Representations Procedure (England) Regulations 2006.