**The Rights of Care Leavers and Making Effective Complaints**

**Dr Lynn Brady, Sara Gomes and Malcolm Johnson**

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**About the speakers**

**Dr Lynn Brady** is an advocate and Independent Person for Children Act complaints. She has a PhD in social care specialising in the needs of traumatised young people in the care system, who have challenging behaviour. She also has a postgraduate teaching qualification as well as professional qualifications in advocacy for children and young people, childcare, counselling, NVQ assessment and verification. For the past 40 years her work has been linked to improving the lives of children, young people and families – particularly those who are disadvantaged and/or disengaged either in the community, education or training.

**Sara Gomes** is a qualified lawyer in Portugal and she has a Masters’ degree in International Law focussing on the protection of street children. She has 15 years’ experience advising and supporting care leavers. She is the author of “Sorted and Supported” and “The Door is Closed” published by Coram Voice.

**Malcolm Johnson** works for Hudgell Solicitors as a Senior Solicitor. He specialises in claims brought by survivors of abuse and children in care, as well as care leavers. Malcolm is one of the authors of Child Abuse Compensation Claims published by Jordans and helped found the Association of Child Abuse Lawyers in 1998. He has advised a number of charities who represent children in care and care leavers on the subject of safeguarding and the making of statutory complaints.

All three speakers are at present working together on a new book, “The Rights of Care Leavers and Making Effective Complaints - A Guide for Advocates” due to be published in December 2018.

**1. Different groups of children who are entitled to bring complaints**

The law distinguishes between different types of children.

* Children in care - Looked after Children
* Children who require support, whom we call children in need
* Care leavers, who are leaving the care system.

Complaints can be brought by these children or their parents, or their representatives.

The Children Act 1989 set up a complaints system under which a child could make a complaint to the local authority.

**2. The Complaints System for Children’s Services – how it was set up**

S26 of the Children Act 1989 required the state to set up a system of complaints handling for children and care leavers.

Every local authority has to establish a procedure for considering any representations (including any complaint) made to them by the following people: -

* any child who is being looked after by them or who is not being looked after by them but is in need
* a parent
* any person who is not a parent but who has parental responsibility for them
* any local authority foster parent
* such other person as the authority consider has a sufficient interest in the child’s welfare to warrant the child’s representations being considered by them
* care leavers.

Care leavers are, very briefly, children who were looked after by a local authority but who are entitled to further local authority support under the 1989 Act after the age of sixteen and in some cases up to the age of 25.

The categories are:

Eligible Children

Relevant Children

Former Relevant Children

Qualifying Children

The precise definition for each of care leaver and their entitlements to support is a complex subject and beyond the scope of this document. Certain charities publish very helpful guidance – for instance Coram Voice.

<http://www.coramvoice.org.uk/young-peoples-zone/are-you-care-leaver>

**Local authorities are obliged to provide advocacy services for children in care, children in need and care leavers, who are making complaints under the Children Act 1989 representations procedure**.

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

These are the regulations that specify precisely how the complaints procedure is to work.

There is also the guidance issued alongside the regulations and commonly used by both advocates and local authority complaints handlers, “*Getting the Best from Complaints" published by the Department for Education and Skills”*. This can be found at:-

[www.gov.uk/government/publications/childrens-social-care-getting-the-best-from-complaints](http://www.gov.uk/government/publications/childrens-social-care-getting-the-best-from-complaints)

**3.1 The Main Stages of the Complaints Procedure**

The 2006 Regulations sets out the procedure, which is in three stages.

* Stage One – Local Resolution
* Stage Two – Investigation
* Stage Three – Review Panel

**3.2 Which Complaints can be considered?**

Regulation 6 states that any complaint may be made orally or in writing and under Regulation 7 may be withdrawn in the same way.

Regulation 8 sets out those complaints that cannot be considered. These are complaints where:-

* The complainant has stated in writing to the local authority that he is taking, or intends to take, proceedings in any court or tribunal – for instance a compensation claim against the local authority.
* The local authority is taking or proposing to take disciplinary proceedings against any person – this could be for instance, against a social worker involved with a child.
* The local authority has been notified that any person is conducting an investigation in contemplation of criminal proceedings, or where criminal proceedings are pending – for instance the prosecution of someone who is looking after the child.

In each of the above cases, the local authority must have decided that consideration, or further consideration, of the complaint would prejudice the conduct of any proceedings or investigation.

If they do so, then they must notify the complainant in writing, and if any of the circumstances that are preventing a complaint being made are discontinued or completed, then the complainant may resubmit their complaint. They must do so no later than one year after the discontinuance or completion of the circumstances that held up the complaint in the first place.

Mistakes made by local authorities in relation to children and adults can sometimes form the subject of compensation claims, which are brought through the civil courts. These can prove very expensive, not least because the award of compensation is accompanied by legal costs (which can be as much as, if not more than, the actual compensation amount). On the other hand, a complaint may cost the local authority very much less. There are situations where the complaints process is in fact the best way forward because it is quicker and less costly for the complainant.

This is one of those matters on which advice should be taken by a solicitor specialising in compensation claims brought against social services by children.

**3.3 Time Limits**

Regulation 9 contains the time limits for making a complaint. Briefly, a complainant must make their representations about a matter no later than one year after the grounds to make the representations arose. This time limit can be waived by a local authority if, having regard to all the circumstances, they conclude that it would not be reasonable to expect the complainant to have made the representations within the time limit; and notwithstanding the time that has passed it is still possible to consider the representations effectively and fairly. Consequently, an adult could make a complaint about their experiences in care as a child and many adults do just that, sometimes many years after the event.

**3.4 Delay on the Part of the Local Authority and Non-Compliance with the Regulations**

There are also time limits for complaint handlers, which we discuss below. These are times by which various stages of the complaints process should be completed. In the writers' experience, these time limits are rarely met by local authorities and, as a consequence, the complaints process can be drawn out to a year or more. Advocates should remind local authorities of the time limits set down in the Regulations. The Regulations actually oblige the local authority to keep the complainant informed, in writing, of the reasons for the delay. It is possible to approach the Local Government and Social Care Ombudsman in relation to these delays. In the writers' experience the Ombudsman will contact the local authority to give them a "nudge".

**3.5 Who can bring a Complaint on Behalf of a Child?**

The child, a parent, a person with parental responsibility or a foster parent can bring a complaint. However, others with a “sufficient interest” can bring a complaint too on behalf of the child. Regulation 12 says that where a local authority has received representations from this kind of person, they must as soon as possible decide whether that person has a sufficient interest in the welfare of the child to warrant that person’s representations being considered by them. So, a relative without parental responsibility could bring a complaint. When the local authority makes the decision as to whether the person bringing the complaint does have sufficient interest, they must take into account the views of the child if they consider it appropriate to do so. If they decide that there is insufficient interest, then they must notify the complainant and tell him that no further action will be taken in respect of his representations. They also have to tell the child, if they consider it appropriate to do so.

**3.6 Stage One - Local Resolution**

Regulation 14 sets out one way in which the complaint can be quickly resolved by means of “local resolution”. The local resolution is designed for simple complaints, particularly those that are made orally by a child or a care leaver. It can be sidestepped if the local authority and the complainant agree. The idea is that the local authority tries to resolve the complaint within 10 working days of the day on which the complaint is received by the local authority. That start date is postponed, where a child or care leaver has not yet found a person with a sufficient interest to make a complaint for them (if they cannot or do not want to make it themselves), or an advocate has not yet been appointed.

The local authority can either agree to extend the 10 days or simply extend it unilaterally if the complaint issues are complex. If the 20 working days, or the agreed extended deadline has not been met, then the complainant can ask for the complaint to be considered independently at stage 2.

Regulation 15 says that if local resolution does not work, then the complainant can ask for their complaint to be considered in the next stage which comes under Regulation 17.

Regulation 16 is designed for complaints that are made orally, but which cannot be resolved under local resolution. Where a complainant agrees that their representations should not be considered under local resolution or they make a request, then the local authority must as soon as possible prepare a written record of the representations, invite the complainant's comments on it, and amend it as necessary. That written record then becomes the complaint. Regulation 16 underlines how important it is for any person making a complaint to set out the issues in the complaint clearly. A child or care leaver may have great difficulty doing that, or putting those issues onto paper without the support of an adult.

* Stage One - should be completed within 10 working days from when the complaint was submitted orally or in writing.
* The deadline can be extended to 20 working days if agreed or if the complaint is complex.

**3.7 Stage Two - Investigation**

Regulation 17 sets out the next stage following the local resolution procedure in Regulation 14.

In practice, Stage Two complaints will be investigated by what is known as an investigating officer.

The Regulations do not contain any mention of an investigating officer, but their role is set out in "*Getting the Best from Complaints*".

The investigating officer may be appointed from inside or outside the local authority however they must be sufficiently independent from the staff, team or service complained about. So, for example, if a complainant made a complaint about an adoption service, a senior manager from a care-leaving service could be the investigating officer.

Regulation 17 provides for the appointment of an "independent person". Their role is to make sure the process is open and transparent and that the young person stays the focus of all the professionals involved in resolving the complaint. They typically shadow the investigating officer in meetings, discussions and reviews of documents but their role is not a passive one and they are able to intervene or make recommendations if they are not satisfied with how the investigation is being pursued.

The local authority must consider the complainant’s representations, with the independent person, and send notice of their response within 25 working days of the date on which it was agreed not to use local resolution or from the date on which the complainant requested an investigation. This is known as the “start date”. This date can be extended to 65 working days but, again, this should really only happen where there is a good reason and the complainant must be informed.

The local authority’s response to the complaint must include information about the complainant's right, under regulation 18, to request that the representations be further considered by a Stage 3 panel and the procedure for making such a request.

* An independent person must be appointed for a Stage 2 investigation.
* The investigation should be completed with 25 working days.
* An extension to 65 working days can be agreed with the complainant.

**3.8 Stage Three – Review Panel**

Regulation 18 is the next stage. Where the complainant is dissatisfied with the outcome of the Stage 2 investigation of their complaint, they may request that their complaint be escalated to Stage 3 – a review panel. There is a time limit for making this kind of request. It must be made within 20 working days of receiving the response to the Stage 2 investigation. The request to escalate the complaint must set out the reasons for the complainant's dissatisfaction with the outcome of the investigation.

Regulation 19 sets out the procedure of the review panel stage. Where the local authority has received a suitable request, they must appoint a panel of three independent persons to consider the representations. The panel cannot include the independent person and investigating officer of the Stage 2 investigation. The panel has to meet within 30 working days of the local authority receiving a request for it. At its meeting, it must consider any oral or written submissions made by the complainant, the local authority, and any other person who has a sufficient interest in the proceedings.

The Regulations state that the panel must hear any independent person appointed for the Stage 2 investigation, if that independent person wishes to make representations.

The complainant is entitled to have either his advocate, or any other person of his choice, present at the meeting to speak on his behalf.

Following that meeting the panel compiles a written report setting out a brief summary of the complaint and the panel's recommendations. Within 5 working days of the meeting the panel must send its report to the local authority, the complainant and his advocate or representative, the Stage 2 independent person and any other person with a sufficient interest. Within 15 working days of receiving the panel's recommendations the local authority must determine how the authority will respond to them and what they propose to do in the light of them. They must also send to the complainant its response and proposals, along with information about making a complaint to the Local Government and Social Care Ombudsman.

* The complainant’s request for a Stage 3 review panel must be made within 20 days of receiving the local authority’s Stage 2 response.
* The panel must meet within 30 days of receiving the complainant’s request.
* The panel report must be produced within 5 working days of the panel meeting.
* The local authority must issue a response within 15 working day of receiving the review panel report.

**3.9 Complaint against other types of organisations**

The Regulations are slightly different for voluntary organisations that provide accommodation for children, and there are additional regulations for Children’s Homes and Independent Fostering Agencies.

**4. The Role of the Local Government and Social Care Ombudsman (LGSCO)**

**4.1 Introduction**

If a complainant is dissatisfied with the local authority’s complaints process, he can take the matter to the LGSCO, who will decide whether the complaint comes within their remit and investigate it.

**4.2 The LGSCO’s position on financial remedies**

The LGSCO has published “*Guidance on good practice: Remedies*” in May 2018. Pages 2 and 3 set out the wide range of things that the LGSCO can do.

<https://www.lgo.org.uk/.../guidance-notes/guidance-on-remedies>

On page 2 of the Guidance, the LGSCO makes the following important point about the kinds of remedies that it can award: -

*“Sometimes we will recommend a financial payment to the person who brought their complaint to us. This might be to reimburse a person who has suffered a quantifiable financial loss, or it might be more of a symbolic payment which serves as an acknowledgement of the distress or difficulties they have been put through. But our remedies are not intended to be punitive and we do not award compensation in the way that a court might. Nor do we calculate a financial remedy based on what the cost of the service would have been to the provider*. “

Nonetheless, the LGSCO also says (page 5): -

*“Our key principle is that the remedy should, as far as possible, put the complainant*

*back in the position he or she would have been in but for the fault we have identified.”*

On page 23 of the Guidance, the LGSCO mentions some of the kind of remedies available to children: -

“

* *In complaints involving children of sufficient maturity and understanding we should take account of the child’s view of injustice and remedy, if this can be obtained without causing further distress.*
* *In cases of young people aged 16 plus there may be grounds to consider paying all or some of a financial remedy direct to them.*
* *Remedies for homelessness and lost education may also apply, particularly for a child leaving care.”*

**4.3. “Distress” and “Time and Trouble”**

As can be seen from the cases below, complainants frequently receive awards not only for their distress, but also for their time and trouble in trying to solve the problem caused by the local authority’s maladministration.

Section 2 of the LGSCO’s Guidance on pages 9 and 10 deals with the kinds of compensation that is recommended in cases of “distress” or “time and trouble”. These pages repay reading, and they can be used to argue for a suitable figure either from the LGSCO or the local authority.

*“A remedy payment for distress is often a moderate sum of between £100 and £300. In cases where the distress was severe or prolonged, up to £1,000 may be justified. Exceptionally, we may recommend more than this.”*

*“The remedy payment for time and trouble is unlikely to be less than £100 or more than £300. It should be adjusted to reflect the degree of extra difficulty experienced by the complainant, and any factors which make the complainant vulnerable.”*

**5. Case Studies** **from the LGSCO**

The LGSCO’s website has a facility for searching decisions: -

<http://www.lgo.org.uk/decisions>

We now consider a number of complaints, which have gone before the LGSCO. It is important to realise that the remedies recommended by the LGSCO are not restricted to compensation but also include remedies such as an apology or reinstatement of services.

Not all of these complaints appear on the LGSCO’s website. For each report we have provided the website page.

Malcolm Johnson has also set up his own website in conjunction with the writing of “*An Advocates Guide to Complaints in England”* to assist advocates work out the kind of remedies that are appropriate for a particular complaint. This can be found at:-

<http://www.complaintadvocates.co.uk/>

**Care Leavers**

**Age Assessment**

<http://www.lgo.org.uk/decisions/children-s-care-services/other/14-012-369>

The Council delayed in assessing Mr R’s age and failed to make adequate enquiries to ascertain the authenticity of his birth certificate. It assessed his age as three years older than he really was. This caused him a significant injustice as he missed out on appropriate education and was placed in inappropriate accommodation. The ombudsman recommended the council pay Mr R £500 in recognition of the stress and anxiety suffered, £6000 for his loss of four years’ education and £3000 for not receiving age appropriate services for three years.

**Failure to take into care and treat child as care leaver**

<https://www.lgo.org.uk/decisions/children-s-care-services/looked-after-children/16-005-686>

In 2008, Miss D was 16 years old. She first came to the attention of the Council’s Crisis Intervention and Support Team (CIST) in August 2008. Her mother said she could no longer cope with Miss D and she wanted her to leave. Miss D then went missing. On 6 August 2008, Miss D was dropped off at another family member’s house. Following medical tests, it was suspected she had been drugged with some form of date drug and possibly sexually abused. The Police were involved and took a statement from Miss D, who returned to her mother. However, matters continued to deteriorate at home and on 14 August, the Council placed Miss D in bed and breakfast accommodation and then into new, specialist accommodation for young people in housing crisis. At the accommodation, she received a fair amount of support. At the beginning of 2009 when Miss D was still 16 years old, Children’s Social Services closed Miss D’s case. She remained in the specialist accommodation until July 2010 when she was 18 years old. The Council was in the process of re-housing her in permanent accommodation when Miss D found out she was pregnant. As a result, the Council found her accommodation at a mother and baby unit. In July 2011, Miss D was placed in private rented accommodation where she stayed until April 2012 when she asked the Council to move her because she was in fear of violence. In 2014, Miss D began university. In 2016 she made a complaint to the council about her housing arrangements and also that the Council had failed to recognise her as a looked after child from the age of 16.

The LGO found that when Miss D presented to the Council as homeless in 2008, the Council should have accommodated her under S20 of the Children Act 1989. The Council conceded this point. Because Miss D was accommodated by the Council between the ages of 16 and 18, for a period significantly in excess of 13 weeks, the Council owed her the same duties that it owed all looked after children. The amount of support offered to a looked after child was significant. Miss D would have had an allocated social worker and the Council would have been under a duty to safeguard and promote her welfare. The Council would also have been under a duty, once she had been a looked after child for 13 weeks, to make plans for her as a care leaver. This included appointing a personal adviser, assessing her needs and preparing a care plan and a pathway plan for when she became a care leaver. The Council should also have paid for her housing and subsistence costs. However, Miss D received benefits to cover these expenses, which she would not have been entitled to if the Council had formally housed her under s20. As a result, the LGO said that she had not suffered a financial disadvantage.

In July 2010, when Miss D was 18 years old, she became a former relevant child. If the Council had recognised Miss D as a former relevant child, she would have been entitled to assistance if her welfare required it until she reached the age of 21, or longer if stated in her pathway plan. In 2014, Miss D started university. As a former relevant child, she was entitled to significant support. This included a personal adviser, and an assessment to determine whether the course she was taking and her financial situation entitled her to help with expenses connected with her education, a contribution towards living expenses and a grant because she was in higher education. Miss D did not receive any of this support.

The LGO recommended that the Council pay Miss X £500 to acknowledge the distress this caused.

The LGO recommended that the Council assess what support Miss D had missed out on as a care leaver since she turned 18. It should then prepare and implement a plan to ensure she was not disadvantaged by the Council’s failure to recognise her as a care leaver. This should include consideration of any financial support she had missed out on and consideration of extending the period of care leaver support provided to Ms X. The Council should report back to the LGO.

**Failure to take into care and treat complainant as care leaver**

[www.lgo.org.uk/decisions/housing/allocations/14-018-347](http://www.lgo.org.uk/decisions/housing/allocations/14-018-347)

Ms X was known to children’s services from childhood. She had a difficult relationship with her mother and a history of mental health problems including depression and threats of self-harm. In January 2007 Ms X’s mother telephoned social services to say she could not cope with Ms X’s behaviour. There were further approaches by the mother but social services decided not to act. In July 2008 Ms X approached the Council as homeless as her mother refused to care for her any more. She was 16 years old. The Council’s Housing Department placed her in a hostel. In December 2008 the Council received a hospital referral. Ms X had taken an overdose and was staying temporarily with a friend in another council’s area. The Council closed the case. In September 2010 Ms X was sectioned under the Mental Health Act after attempting to take her own life. Following this she was referred to the Community Mental Health Team and allocated a care coordinator. She continued to have various problems with her mental health and her housing. Then in 2015, having sought legal advice about her case, the Council accepted Ms X was accommodated by the Council between the ages of 16 and 18 for a period significantly greater than 13 weeks. It therefore accepted that Ms X was entitled to be treated as a former relevant child.

The LGO found: -

* Ms X approached the Council as homeless in July 2008. She was 16 years old. At that time the Council should have made a referral to Social Services as Ms X was a child.
* The Council received a referral on 13 August 2008 from the hostel seeking support and assistance for Ms X. The Council should have carried out an assessment of Ms X’s needs in response to this request.
* Social Services had a history of involvement with Ms X and her mother and it was evident they had a difficult relationship and that the Council knew this. Had Social Services assessed Ms X it was probable it would have found Ms X was without parental support. The Council would have accommodated Ms X under S20 of the Children Act 1989. As a result of which Ms X would have been entitled to support and assistance from the Council as a looked after child.

The LGO said that the following had been done, and he also made the following recommendations: -

* The Council had allocated Ms X a personal adviser to begin an assessment and prepare a pathway plan for Ms X to identify the support and assistance required by Ms X as care leaver.
* Ms X was accommodated by the Council for 15 months until she turned 18. The Council should have treated her as a looked after child. Ms X missed out on the support and assistance she would have received from the Council. The LGO recommended the Council pay Ms X £1250 to acknowledge the distress this caused.
* The Council should assess what support Ms X had missed out on since she turned 18. It should then prepare and implement a plan to ensure Ms X was not disadvantaged by the late decision to recognise her as a care leaver. This should include consideration of any financial support she has missed out on and consideration of extending the period of care leaver support provided to Ms X.

**Failure to provide sufficient support when leaving care**

<http://www.lgo.org.uk/decisions/children-s-care-services/looked-after-children/14-018-019#point4>

Mr X, a vulnerable young person, brought a claim against London Borough of Croydon. The LGSCO found that the Council failed to provide Mr X with sufficient support when he left care. This had caused Mr X a great deal of uncertainty and distress. The Council failed to comply with recommendations made by an Independent Investigator despite agreeing with his findings in relation to the complaint. The Council agreed to pay Mr X £3,000 to help Mr X secure private rented accommodation and £750 for the distress and uncertainty caused by its failure to make payments for his bed and breakfast accommodation, delay in securing permanent accommodation as well the time and trouble caused in having to complain to the Ombudsman.

**Assisting and supporting a vulnerable man**

<http://www.lgo.org.uk/decisions/adult-care-services/transition-from-childrens-services/08-013-283>

This was a claim against the London Borough of Lambeth which failed to take full account of a man’s vulnerability when assisting and supporting him to ensure that key information was supplied to his personal adviser. The LGO found that the social services did not assess the man’s needs, including financial needs, in 2006 before he started his diploma course. Further the LGO found that there were shortcomings in the pathways plans prepared in March 2006, September 2006 and March 2007, and a failure to follow through agreed action. This led to the man’s continuing disappointment and frustration and additional put the start of his university course in jeopardy.  As a result, the man did not receive the support and assistance he should have received from his personal adviser and he suffered depression. The Council agreed the actions below:

* complete the review of Mr Smith’s pathway plan so that he had clarity with regard to financial matters and the support that the Council would provide for him;
* pay Mr Smith £5,000 in recognition of the injustice he had suffered as a result of the Council’s maladministration; and
* pay the charity £2,000 as some recognition of the role it has played in Mr Smith’s life in the absence of effective support from the Council.

**Transition to University**

<http://www.lgo.org.uk/decisions/adult-care-services/transition-from-childrens-services/13-011-067#point5>

The LGO considered a claim against Birmingham City Council. Due to the Council’s failure to make the proper transitional arrangements for Ms A’s care in time for her to start university as planned, Ms A had to defer the start of her course for a year. The Council found that there were long delays, and no action was taken to progress Ms A’s transitional arrangements. As a result, Ms A suffered significant disappointment as well as the upset of making different arrangements for her care for the intervening year. The Council agreed to apologise to Ms A and to make her a payment of £5,000 to her to acknowledge the significant effect of its delays. The Council had further agreed to look again at the issue of the Direct Payments which Ms A was assessed.

**University Costs**

<http://www.lgo.org.uk/decisions/children-s-care-services/looked-after-children/16-009-920>

The LGSCO considered a claim brought by Miss X against Lancashire Country Council. Miss X was a care leaver who complained that the Council failed to pay her financial support to retake her final year at university after she was unable to complete her third year due to mental health and relationship problems. A charity paid for Miss X’s course fees. Miss X moved to cheaper social housing but said she was left with significant debt. The Council agreed to pay Miss X the accommodation costs Miss X incurred - £3, 879.

**Failure to fund higher education**

<https://www.lgo.org.uk/decisions/children-s-care-services/looked-after-children/14-000-244>

Miss X, a care leaver, complained that the Council would not fund her higher education costs even though she said it previously led her to believe it would. She said the Council led her to believe it would pay her tuition fees and other expenses, as was its policy for care leavers until January 2014. Miss X was due to begin university in September 2014. She believed the Council was acting unfairly in applying its new policy to her.

The LGO said that he had considered the Council’s “Financial Support for Care Leavers attending University’ policy” and the statutory guidance “Planning Transition to Adulthood for Care Leavers 2010”. All councils had to provide financial support for their care leavers. Those attending university could get extra financial support. The law said that councils must pay a bursary of £2,000 over three years to those care leavers attending university and they must fund the young person’s accommodation out of term time. This Council had previously provided more than the statutory minimum. It had paid the care leaver’s course fees and term time accommodation. In late 2013 the Council reviewed the support it gave to its care leavers who went on to study at university. It changed its policy and decided not to pay university fees and term time accommodation costs as these can be funded through student loans and maintenance grants. It decided it would pay a one-off bursary of £3,500 on completion of the university course. The policy took effect from January 2014 and applied to those care leavers starting university in 2014/15.

In response to the LGO’s the Council said that it had reviewed its decision about Miss X and had now agreed to fund Miss X's university fees and term-time accommodation costs according to its previous policy.

**6. Judicial Review, Compensation claims brought through the courts and the Criminal Injuries Compensation Authority**

**6.1 Judicial Review**

Judicial review is a way of challenging a public institution’s decision through the courts. As a general rule, judicial review is concerned with present and future actions and does not look into historic issues. **There are very strict time limits for commencing such an action, and it will require the help of a specialist firm**.

**6.2 Civil claims**

There are instances where a child or a young person can bring a claim for abuse or neglect through the courts, which is in effect for the “injury” that they have suffered. For this they will need a specialist solicitor, who can recognise whether such a claim is viable, and who can effectively fund the claim.

A civil action is a claim taken out by a Claimant against an individual, or an organisation such as a local authority, known as the Defendant. It can lead to the issue of proceedings, and in very rare circumstances an actual trial before a judge. Most civil actions for personal injury are settled without any kind of court proceedings at all.

In child abuse compensation claims, certain types of claim are readily settled by the Defendant, particularly those where the abuse has been perpetrated by an employee of a local authority or some other organisation, and that employee has been convicted.

There are also claims made against local authorities for “failure to take into care”. At present there is some doubt as whether the courts will allow these claims to be brought in the future, and we are awaiting a UK Supreme Court decision on that issue which arose from a Court of Appeal decision **CN & GN v Poole Borough Council [2017] EWCA Civ 2185.** That decision is expected any day now.

Very briefly – a **civil claim must be issued in court within three years of the incident of abuse in question. For children that time limit does not begin until they are 21 years of age.** In addition, section 33 of the Limitation Act 1980 allows a court in exceptional circumstances to extend the time limit of three years.

There is another way around the three year time limit, and that is if a person does not have mental capacity as an adult at the time they are abused or when they become an adult.

**6.3 The Criminal Injuries Compensation Authority**

The CICA is a government organisation that compensates victims of “crimes of violence”. However, the compensation that they award is partly based on a “tariff system” and may be less than what a victim of child abuse recovers in a civil action. Moreover, the CICA will not pay costs to the solicitor who helps the victim bring the application.

Very recently a legal case brought against the government has led to the abolition of the “same roof” rule, which prevented people abused within their own home before the 1st October 1979, from claiming compensation.

If an application to the CICA is to be made, it should not be delayed under any circumstances. An application must be sent by the applicant so that it is received by the CICA as soon as reasonably practicable after the incident giving rise to the criminal injury to which it relates, and in any event within two years after the date of that incident. Where the Applicant was a child when incident took place, and the incident was reported before their 18th birthday, the application has to be filed by the time they reach 20. If the incident was reported after their 18th birthday, then the application must be filed within two years after the date of the first report to the police. The time limit can be waived, but only in exceptional circumstances.